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THIRD DIVISION

[G.R. No. 149110. April 9, 2003]

NATIONAL POWER CORPORATION, *petitioner, vs.* **CITY OF CABANATUAN,** *respondent.*

SYNOPSIS

Petitioner is a government owned and controlled corporation created under Commonwealth Act No. 120, as amended. For many years, petitioner sold electric power to the residents of Cabanatuan City. Pursuant to a 1992 ordinance, the respondent assessed the petitioner a franchise tax. In refusing to pay the tax assessment, petitioner argued that the respondent had no authority to impose tax on government entities like itself and that it was a tax exempt entity by express provisions of law. Hence, respondent filed a collection suit demanding payment of the assessed tax due alleging that petitioner's exemption from local taxes has been repealed. The trial court dismissed the case and ruled that the tax exemption privileges granted to petitioner still subsists. On appeal, the Court of Appeals reversed the trial court's order. Petitioner's motion for reconsideration was denied by the appellate court. Hence, this petition for review filed before the Supreme Court.

The Supreme Court denied this petition and affirmed the decision of the Court of Appeals. According to the Court, one of the most significant provisions of the Local Government Code (LGC) is the removal of the blanket exclusion of instrumentalities and agencies of the national government from the coverage of local taxation. Although as a general rule, Local Government Units (LGU) cannot impose taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, this rule now admits an exception, *i.e.*, when specific provisions of the LGC authorize the LGU to impose taxes, fees or charges on the aforementioned entities. In the case at bar, Section 151 in relation to Section 137 of the LGC clearly authorized the respondent city government to impose on the petitioner the franchise tax in question.

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SYLLABUS

1. TAXATION; TAXES AS THE LIFEBLOOD OF THE GOVERNMENT; CONSTRUED.— Taxes are the lifeblood of the government, for without taxes, the government can neither exist nor endure. A principal attribute of sovereignty, the exercise of taxing power derives its source from the very existence of the state whose social contract with its citizens obliges it to promote public interest and common good. The theory behind the exercise of the power to tax emanates from necessity; without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.

2. ID.; POWER TO TAX; LOCAL GOVERNMENT UNITS; ENJOY DIRECT AUTHORITY TO LEVY TAXES, FEES AND OTHER CHARGES PURSUANT TO ARTICLE X, SECTION 5 OF THE CONSTITUTION; RATIONALE.— In recent years, the increasing social challenges of the times expanded the scope of state activity, and taxation has become a tool to realize social justice and the equitable distribution of wealth, economic progress and the protection of local industries as well as public welfare and similar objectives. Taxation assumes even greater significance with the ratification of the 1987 Constitution. Thenceforth, the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges pursuant to Article X, Section 5 of the 1987 Constitution, *viz*: "Section 5.— Each Local Government unit shall have the power to create its own sources of revenue, 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." This paradigm shift results from the realization that genuine development can be achieved only by strengthening local autonomy and promoting decentralization of governance. For a long time, the country's highly centralized government structure has bred a culture of dependence among local government leaders upon the national leadership. It has also "dampened the spirit of initiative, innovation and imaginative resilience in matters of local development on the part of local government leaders." The only way to shatter this culture of dependence is to give the LGUs a wider role in the

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delivery of basic services, and confer them sufficient powers to generate their own sources for the purpose. To achieve this goal, Section 3 of Article X of the 1987 Constitution mandates Congress to enact a local government code that will, *consistent with the basic policy of local autonomy,* set the guidelines and limitations to this grant of taxing powers.

3. **ID.; ID.; ID.; CANNOT IMPOSE TAXES, FEES OR CHARGES OF ANY KIND ON THE NATIONAL GOVERNMENT, ITS AGENCIES AND INSTRUMENTALITIES AS A RULE; EXCEPTION.**— Considered as the most revolutionary piece of legislation on local autonomy, the LGC effectively deals with the fiscal constraints faced by LGUs. It widens the tax base of LGUs to include taxes which were prohibited by previous laws such as the imposition of taxes on forest products, forest concessionaires, mineral products, mining operations, and the like. The LGC likewise provides enough flexibility to impose tax rates in accordance with their needs and capabilities. It does not prescribe graduated fixed rates but merely specifies the minimum and maximum tax rates and leaves the determination of the actual rates to the respective *sanggunian.* One of the most significant provisions of the LGC is the removal of the blanket exclusion of instrumentalities and agencies of the national government from the coverage of local taxation. Although as a general rule, LGUs cannot impose taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, this rule now admits an exception, *i.e.*, when specific provisions of the LGC authorize the LGUs to impose taxes, fees or charges on the aforementioned entities, *viz*: "Section 133. *Common Limitations on the Taxing Powers of the 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: xxx (o) Taxes, fees, or charges of any kind on the National Government, its agencies and instrumentalities, and local government units."

4. **MERCHANTILE LAW; FRANCHISE; DEFINED AND CONSTRUED.**— In its general signification, a franchise is a privilege conferred by government authority, which does not belong to citizens of the country generally as a matter of common right. In its specific sense, a franchise may refer to a general or primary franchise, or to a special or secondary franchise.

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The former relates to the right to exist as a corporation, by virtue of duly approved articles of incorporation, or a charter pursuant to a special law creating the corporation. The right under a primary or general franchise is vested in the individuals who compose the corporation and not in the corporation itself. On the other hand, the latter refers to the right or privileges conferred upon an existing corporation such as the right to use the streets of a municipality to lay pipes of tracks, erect poles or string wires. The rights under a secondary or special franchise are vested in the corporation and may ordinarily be conveyed or mortgaged under a general power granted to a corporation to dispose of its property, except such special or secondary franchises as are charged with a public use.

5. TAXATION; FRANCHISE TAX IMPOSED UNDER THE LOCAL GOVERNMENT CODE; REQUISITES.— In Section 131 (m) of the LGC, Congress unmistakably defined a franchise in the sense of a secondary or special franchise. This is to avoid any confusion when the word franchise is used in the context of taxation. As commonly used, a *franchise tax* is "a tax on the privilege of transacting business in the state and exercising corporate franchises granted by the state." It is not levied on the corporation simply for existing as a corporation, upon its property or its income, but on its exercise of the rights or privileges granted to it by the government. Hence, a corporation need not pay franchise tax from the time it ceased to do business and exercise its franchise. It is within this context that the phrase "*tax on businesses enjoying a franchise*" in Section 137 of the LGC should be interpreted and understood. Verily, to determine whether the petitioner is covered by the franchise tax in question, the following requisites should concur: (1) that petitioner has a "franchise" in the sense of a secondary or special franchise; and (2) that it is exercising its rights or privileges under this franchise within the territory of the respondent city government. To stress, a franchise tax is imposed based not on the ownership but on the exercise by the corporation of a privilege to do business. The taxable entity is the corporation which exercises the franchise, and not the individual stockholders.

6. ID.; TAX EXEMPTION; CONSTRUED STRONGLY AGAINST THE CLAIMANT; APPLICATION IN CASE AT BAR.— As a rule, tax exemptions are construed strongly against the claimant.

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Exemptions must be shown to exist clearly and categorically, and supported by clear legal provisions. In the case at bar, the petitioner's sole refuge is Section 13 of Rep. Act No. 6395 exempting from, among others, "all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities." However, Section 193 of the LGC withdrew, subject to limited exceptions, the sweeping tax privileges previously enjoyed by private and public corporations. Contrary to the contention of petitioner, Section 193 of the LGC is an express, albeit general, repeal of all statutes granting tax exemptions from local taxes. It reads: "Sec. 193. *Withdrawal of Tax Exemption Privileges.— Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations,* except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code." It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*. Not being a local water district, a cooperative registered under R.A. No. 6938, or a non-stock and non-profit hospital or educational institution, petitioner clearly does not belong to the exception. It is therefore incumbent upon the petitioner to point to some provisions of the LGC that expressly grant it exemption from local taxes.

7. POLITICAL LAW; GOVERNMENT OWNED AND CONTROLLED CORPORATION; CONSTRUED.— Section 2 of Pres. Decree No. 2029 classifies government-owned or controlled corporations (GOCCs) into those performing governmental functions and those performing proprietary functions, *viz*: "A government-owned or controlled corporation is a stock or a non-stock corporation, *whether performing governmental or proprietary functions, which is directly chartered by special law* or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority of its outstanding voting capital stock xxx." Governmental functions are those pertaining to the administration of

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government, and as such, are treated as absolute obligation on the part of the state to perform while proprietary functions are those that are undertaken only by way of advancing the general interest of society, and are merely optional on the government. Included in the class of GOCCs performing proprietary functions are "business-like" entities such as the National Steel Corporation (NSC), the National Development Corporation (NDC), the Social Security System (SSS), the Government Service Insurance System (GSIS), and the National Water Sewerage Authority (NAWASA), among others.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Edgardo G. Villarin and *Trese D. Wenceslao* for respondent.

D E C I S I O N

PUNO, *J.*:

This is a petition for review[1] of the Decision[2] and the Resolution[3] of the Court of Appeals dated March 12, 2001 and July 10, 2001, respectively, finding petitioner National Power Corporation (NPC) liable to pay franchise tax to respondent City of Cabanatuan.

Petitioner is a government-owned and controlled corporation created under Commonwealth Act No. 120, as amended.[4] It is tasked to undertake the "development of hydroelectric generations of power and the production of electricity from nuclear, geothermal and other sources, as well as, the transmission

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[1] Petition for Review on *Certiorari* under Rule 45 of the Rules of Civil Procedure. *See* Petition, *Rollo*, pp. 8-28.

[2] CA-G.R. CV No. 53297, penned by Assoc. Justice Rodrigo Cosico. *See* Annex "A" of the Petition, *Rollo*, pp. 30-38.

[3] *Id.*, Annex "B" of the Petition, *Rollo*, p. 39.

[4] Among the amendments to Comm. Act No. 120 are Rep. Act No. 6395 (1971) and Pres. Decree No. 938 (1976).

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of electric power on a nationwide basis."[5] Concomitant to its mandated duty, petitioner has, among others, the power to construct, operate and maintain power plants, auxiliary plants, power stations and substations for the purpose of developing hydraulic power and supplying such power to the inhabitants.[6]

For many years now, petitioner sells electric power to the residents of Cabanatuan City, posting a gross income of ₱107,814,187.96 in 1992.[7] Pursuant to Section 37 of Ordinance No. 165-92,[8] the respondent assessed the petitioner a franchise tax amounting to ₱808,606.41, representing 75% of 1% of the latter's gross receipts for the preceding year.[9]

Petitioner, whose capital stock was subscribed and paid wholly by the Philippine Government,[10] refused to pay the tax assessment. It argued that the respondent has no authority to impose tax on government entities. Petitioner also contended that as a non-profit organization, it is exempted from the payment of all forms of taxes, charges, duties or fees[11] in accordance with Sec. 13 of Rep. Act No. 6395, as amended, *viz*:

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[5] Rep. Act No. 6395, Sec. 2.

[6] *Id.*, Sec. 3.

[7] *Rollo*, p. 41.

[8] "Section 37. Imposition of Tax — Notwithstanding any exemption granted by law or other special law, there is hereby imposed an annual tax on a business enjoying franchise at a rate of 75% of 1% of the gross receipts for the preceding year realized within the territorial jurisdiction of Cabanatuan City."

[9] *Rollo*, p. 41.

[10] *Rollo*, p. 48. Rep. Act No. 6395, Sec. 5. "Capital Stock of the Corporation. — The authorized capital stock of the Corporation is three hundred million pesos divided into three million shares having a par value of one hundred pesos each, which shares are not to be transferred, negotiated, pledged, mortgaged, or otherwise given as a security for the payment of any obligation. The said capital stock has been subscribed and paid wholly by the Government of the Philippines in accordance with the provisions of Republic Act Numbered Four Thousand Eight Hundred Ninety-Seven."

[11] *Rollo*, pp. 52-53.

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Sec. 13. *Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by Government and Governmental Instrumentalities.*— The Corporation shall be non-profit and shall devote all its return from its capital investment, as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section one of this Act, the Corporation is hereby exempt:

(a) From the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;

(b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;

(c) From all import duties, compensating taxes and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects; and

(d) From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power."[12]

The respondent filed a collection suit in the Regional Trial Court of Cabanatuan City, demanding that petitioner pay the assessed tax due, plus a surcharge equivalent to 25% of the amount of tax, and 2% monthly interest.[13] Respondent alleged that petitioner's exemption from local taxes has been repealed by Section 193 of Rep. Act No. 7160,[14] which reads as follows:

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[12] Rep. Act No. 6395, Sec. 13, as amended by P.D. No. 938.

[13] Complaint, Records, pp. 1-3. The case was docketed as Civil Case No. 1659-AF and was raffled to Branch 30 presided by Judge Federico B. Fajardo, Jr.

[14] "The Local Government Code of 1991." The law took effect on January 1, 1992.

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"Sec. 193. *Withdrawal of Tax Exemption Privileges.*— Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code."

On January 25, 1996, the trial court issued an Order[15] dismissing the case. It ruled that the tax exemption privileges granted to petitioner subsist despite the passage of Rep. Act No. 7160 for the following reasons: (1) Rep. Act No. 6395 is a particular law and it may not be repealed by Rep. Act No. 7160 which is a general law; (2) Section 193 of Rep. Act No. 7160 is in the nature of an implied repeal which is not favored; and (3) local governments have no power to tax instrumentalities of the national government. Pertinent portion of the Order reads:

"The question of whether a particular law has been repealed or not by a subsequent law is a matter of legislative intent. The lawmakers may expressly repeal a law by incorporating therein repealing provisions which expressly and specifically cite(s) the particular law or laws, and portions thereof, that are intended to be repealed. A declaration in a statute, usually in its repealing clause, that a particular and specific law, identified by its number or title is repealed is an express repeal; all others are implied repeal. Sec. 193 of R.A. No. 7160 is an implied repealing clause because it fails to identify the act or acts that are intended to be repealed. It is a well-settled rule of statutory construction that repeals of statutes by implication are not favored. The presumption is against inconsistency and repugnancy for the legislative is presumed to know the existing laws on the subject and not to have enacted inconsistent or conflicting statutes. It is also a well-settled rule that, generally, general law does not repeal a special law unless it clearly appears that the legislative has intended by the latter general act to modify or repeal the earlier special law. Thus, despite the passage of R.A. No. 7160 from which the questioned Ordinance No. 165-92 was based, the tax exemption privileges of defendant NPC remain.

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[15] Records, pp. 45-54.

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Another point going against plaintiff in this case is the ruling of the Supreme Court in the case of *Basco vs. Philippine Amusement and Gaming Corporation*, 197 SCRA 52, where it was held that:

> 'Local governments have no power to tax instrumentalities of the National Government. PAGCOR is a government owned or controlled corporation with an original charter, PD 1869. All of its shares of stocks are owned by the National Government. x x x Being an instrumentality of the government, PAGCOR should be and actually is exempt from local taxes. Otherwise, its operation might be burdened, impeded or subjected to control by mere local government.'

Like PAGCOR, NPC, being a government owned and controlled corporation with an original charter and its shares of stocks owned by the National Government, is beyond the taxing power of the Local Government. Corollary to this, it should be noted here that in the NPC Charter's declaration of Policy, Congress declared that: 'x x x (2) the total electrification of the Philippines through the development of power from all services to meet the needs of industrial development and dispersal and needs of rural electrification are primary objectives of the nations which shall be pursued *coordinately and supported by all instrumentalities and agencies of the government,* including its financial institutions.' (italics supplied). To allow plaintiff to subject defendant to its tax-ordinance would be to impede the avowed goal of this government instrumentality.

Unlike the State, a city or municipality has no inherent power of taxation. Its taxing power is limited to that which is provided for in its charter or other statute. Any grant of taxing power is to be construed strictly, with doubts resolved against its existence.

From the existing law and the rulings of the Supreme Court itself, it is very clear that the plaintiff could not impose the subject tax on the defendant."[16]

On appeal, the Court of Appeals reversed the trial court's Order[17] on the ground that Section 193, in relation to Sections 137 and 151 of the LGC, expressly withdrew the exemptions

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[16] Records, pp. 52-54.

[17] *Supra* note 2.

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granted to the petitioner.[18] It ordered the petitioner to pay the respondent city government the following: (a) the sum of ₱808,606.41 representing the franchise tax due based on gross receipts for the year 1992, (b) the tax due every year thereafter based in the gross receipts earned by NPC, (c) in all cases, to pay a surcharge of 25% of the tax due and unpaid, and (d) the sum of ₱10,000.00 as litigation expense.[19]

On April 4, 2001, the petitioner filed a Motion for Reconsideration on the Court of Appeal's Decision. This was denied by the appellate court, *viz*:

"The Court finds no merit in NPC's motion for reconsideration. Its arguments reiterated therein that the taxing power of the province under Art. 137 (*sic*) of the Local Government Code refers merely to private persons or corporations in which category it (NPC) does not belong, and that the LGC (RA 7160) which is a general law may not impliedly repeal the NPC Charter which is a special law — finds the answer in Section 193 of the LGC to the effect that 'tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations except local water districts x x x are hereby withdrawn.' The repeal is direct and unequivocal, not implied.

IN VIEW WHEREOF, the motion for reconsideration is hereby DENIED.

SO ORDERED."[20]

In this petition for review, petitioner raises the following issues:

"A. THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT NPC, A PUBLIC NON-PROFIT CORPORATION, IS LIABLE TO PAY A FRANCHISE TAX AS IT FAILED TO CONSIDER THAT SECTION 137 OF THE LOCAL GOVERNMENT CODE IN RELATION TO SECTION 131 APPLIES ONLY TO PRIVATE PERSONS OR CORPORATIONS ENJOYING A FRANCHISE.

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[18] *Id.* at 36-37.

[19] *Id.* at 38.

[20] *Rollo*, p. 39.

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B. THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT NPC'S EXEMPTION FROM ALL FORMS OF TAXES HAS BEEN REPEALED BY THE PROVISION OF THE LOCAL GOVERNMENT CODE AS THE ENACTMENT OF A LATER LEGISLATION, WHICH IS A GENERAL LAW, CANNOT BE CONSTRUED TO HAVE REPEALED A SPECIAL LAW.

C. THE COURT OF APPEALS GRAVELY ERRED IN NOT CONSIDERING THAT AN EXERCISE OF POLICE POWER THROUGH TAX EXEMPTION SHOULD PREVAIL OVER THE LOCAL GOVERNMENT CODE."[21]

It is beyond dispute that the respondent city government has the authority to issue Ordinance No. 165-92 and impose an annual tax on "businesses enjoying a franchise," pursuant to Section 151 in relation to Section 137 of the LGC, *viz*:

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

In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereof, as provided herein." (*italics supplied*)

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Sec. 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."

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[21] Petition, pp. 9-10; *Rollo*, pp. 16-17.

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Petitioner, however, submits that it is not liable to pay an annual franchise tax to the respondent city government. It contends that Sections 137 and 151 of the LGC in relation to Section 131, limit the taxing power of the respondent city government to private entities that are engaged in trade or occupation for profit.[22]

Section 131 (m) of the LGC defines a "*franchise*" as "a right or privilege, affected with public interest which is conferred upon *private persons or corporations*, under such terms and conditions as the government and its political subdivisions may impose in the interest of the public welfare, security and safety." From the phraseology of this provision, the petitioner claims that the word "private" modifies the terms "persons" and "corporations." Hence, when the LGC uses the term "franchise," petitioner submits that it should refer specifically to franchises granted to private natural persons and to private corporations.[23] Ergo, its charter should not be considered a "franchise" for the purpose of imposing the franchise tax in question.

On the other hand, Section 131 (d) of the LGC defines "*business*" as "trade or commercial activity regularly engaged in as means of livelihood or with a view to profit." Petitioner claims that it is not engaged in an activity for profit, in as much as its charter specifically provides that it is a "non-profit organization." In any case, petitioner argues that the accumulation of profit is merely incidental to its operation; all these profits are required by law to be channeled for expansion and improvement of its facilities and services.[24]

Petitioner also alleges that it is an instrumentality of the National Government,[25] and as such, may not be taxed by the respondent city government. It cites the doctrine in *Basco vs.*

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[22] *Rollo*, p. 18.

[23] Petition, p. 11; *Rollo*, p. 18.

[24] *Ibid.*

[25] Citing the case of *Maceda v. Macaraig*, 197 SCRA 771, 800 (1991).

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Philippine Amusement and Gaming Corporation[26] where this Court held that local governments have no power to tax instrumentalities of the National Government, *viz*:

"Local governments have no power to tax instrumentalities of the National Government.

PAGCOR has a dual role, to operate and regulate gambling casinos. The latter role is governmental, which places it in the category of an agency or instrumentality of the Government. Being an instrumentality of the Government, PAGCOR should be and actually is exempt from local taxes. Otherwise, its operation might be burdened, impeded or subjected to control by a mere local government.

> 'The states have no power by taxation or otherwise, to retard, impede, burden or in any manner control the operation of constitutional laws enacted by Congress to carry into execution the powers vested in the federal government. (*MC Culloch v. Maryland*, 4 Wheat 316, 4 L Ed. 579)'

This doctrine emanates from the 'supremacy' of the National Government over local governments.

> 'Justice Holmes, speaking for the Supreme Court, made reference to the entire absence of power on the part of the States to touch, in that way (taxation) at least, the instrumentalities of the United States (*Johnson v. Maryland*, 254 US 51) and it can be agreed that *no state or political subdivision can regulate a federal instrumentality in such a way as to prevent it from consummating its federal responsibilities, or even seriously burden it from accomplishment of them.*' (Antieau, *Modern Constitutional Law*, Vol. 2, p. 140, italics supplied)

Otherwise, mere creatures of the State can defeat National policies thru extermination of what local authorities may perceive to be undesirable activities or enterprise using the power to tax as 'a tool regulation' (*U.S. v. Sanchez*, 340 US 42).

The power to tax which was called by Justice Marshall as the 'power to destroy' (*Mc Culloch v. Maryland, supra*) cannot be allowed to defeat an instrumentality or creation of the very entity which has the inherent power to wield it."[27]

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[26] 197 SCRA 52 (1991).

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

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Petitioner contends that Section 193 of Rep. Act No. 7160, withdrawing the tax privileges of government-owned or controlled corporations, is in the nature of an implied repeal. A special law, its charter cannot be amended or modified impliedly by the local government code which is a general law. Consequently, petitioner claims that its exemption from all taxes, fees or charges under its charter subsists despite the passage of the LGC, *viz*:

"It is a well-settled rule of statutory construction that repeals of statutes by implication are not favored and as much as possible, effect must be given to all enactments of the legislature. Moreover, it has to be conceded that the charter of the NPC constitutes a special law. Republic Act No. 7160, is a general law. It is a basic rule in statutory construction that the enactment of a later legislation which is a general law cannot be construed to have repealed a special law. Where there is a conflict between a general law and a special statute, the special statute should prevail since it evinces the legislative intent more clearly than the general statute.[28]

Finally, petitioner submits that the charter of the NPC, being a valid exercise of police power, should prevail over the LGC. It alleges that the power of the local government to impose franchise tax is subordinate to petitioner's exemption from taxation; "police power being the most pervasive, the least limitable and most demanding of all powers, including the power of taxation."[29]

The petition is without merit.

Taxes are the lifeblood of the government,[30] for without taxes, the government can neither exist nor endure. A principal attribute of sovereignty,[31] the exercise of taxing power derives its source

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[28] *Rollo*, p. 21.

[29] *Id.* at 21-22.

[30] *Commissioner vs. Pineda*, 21 SCRA 105, 110 (1967) citing *Bull vs. United States*, 295 U.S. 247, 15 AFTR 1069, 1073; *Surigao Electric Co., Inc. vs. Court of Tax Appeals*, 57 SCRA 523 (1974).

[31] *Hong Kong & Shanghai Banking Corp. vs. Rafferty*, 19 Phil. 145 (1918); *Wee Poco vs Posadas*, 64 Phil. 640 (1937); *Reyes vs. Almanzor*, 196 SCRA 322, 327 (1991).

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from the very existence of the state whose social contract with its citizens obliges it to promote public interest and common good. The theory behind the exercise of the power to tax emanates from necessity;[32] without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people.

In recent years, the increasing social challenges of the times expanded the scope of state activity, and taxation has become a tool to realize social justice and the equitable distribution of wealth, economic progress and the protection of local industries as well as public welfare and similar objectives.[33] Taxation assumes even greater significance with the ratification of the 1987 Constitution. Thenceforth, the power to tax is no longer vested exclusively on Congress; local legislative bodies are now given direct authority to levy taxes, fees and other charges[34] pursuant to Article X, Section 5 of the 1987 Constitution, *viz*:

"Section 5. Each Local Government unit shall have the power to create its own sources of revenue, 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."

This paradigm shift results from the realization that genuine development can be achieved only by strengthening local autonomy and promoting decentralization of governance. For a long time, the country's highly centralized government structure has bred a culture of dependence among local government leaders upon the national leadership. It has also "dampened the spirit of initiative, innovation and imaginative resilience in matters of local development on the part of local government leaders."[35] The only way to shatter this culture of dependence is to give the LGUs a wider role in the delivery of basic services,

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[32] *Phil. Guaranty Co., Inc. vs. CIR*, 13 SCRA 775, 780 (1965).

[33] Vitug and Acosta, *Tax Law and Jurisprudence*, 2nd ed. (2000) at 1.

[34] *Mactan Cebu International Airport Authority vs. Marcos*, 261 SCRA 667, 680 (1996) citing Cruz, Isagani A., *Constitutional Law* (1991) at 84.

[35] Pimentel, *The Local Government Code of 1991: The Key to National Development* (1993) at 2-4.

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and confer them sufficient powers to generate their own sources for the purpose. To achieve this goal, Section 3 of Article X of the 1987 Constitution mandates Congress to enact a local government code that will, *consistent with the basic policy of local autonomy*, set the guidelines and limitations to this grant of taxing powers, *viz*:

"Section 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units."

To recall, prior to the enactment of the Rep. Act No. 7160,[36] also known as the Local Government Code of 1991 (LGC), various measures have been enacted to promote local autonomy. These include the Barrio Charter of 1959,[37] the Local Autonomy Act of 1959,[38] the Decentralization Act of 1967[39] and the Local Government Code of 1983.[40] Despite these initiatives, however, the shackles of dependence on the national government remained. Local government units were faced with the same problems that hamper their capabilities to participate effectively in the national development efforts, among which are: (a) inadequate tax base, (b) lack of fiscal control over external sources of income, (c) limited authority to prioritize and approve development projects, (d) heavy dependence on external sources of income, and (e) limited supervisory control over personnel of national line agencies.[41]

[36] *Supra* note 14.

[37] Rep. Act No. 2370 (1959).

[38] Rep. Act No. 2264 (1959).

[39] Rep. Act No. 5185 (1967).

[40] B.P. Blg. 337 (1983).

[41] Sponsorship Remarks of Cong. Hilario De Pedro III, Records of the House of Representatives, 3rd Regular Session (1989–1990), Vol. 8, p. 757.

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Considered as the most revolutionary piece of legislation on local autonomy,[42] the LGC effectively deals with the fiscal constraints faced by LGUs. It widens the tax base of LGUs to include taxes which were prohibited by previous laws such as the imposition of taxes on forest products, forest concessionaires, mineral products, mining operations, and the like. The LGC likewise provides enough flexibility to impose tax rates in accordance with their needs and capabilities. It does not prescribe graduated fixed rates but merely specifies the minimum and maximum tax rates and leaves the determination of the actual rates to the respective *sanggunian*.[43]

One of the most significant provisions of the LGC is the removal of the blanket exclusion of instrumentalities and agencies of the national government from the coverage of local taxation. Although as a general rule, LGUs cannot impose taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, this rule now admits an exception, *i.e.*, when specific provisions of the LGC authorize the LGUs to impose taxes, fees or charges on the aforementioned entities, *viz*:

"Section 133. *Common Limitations on the Taxing Powers of the 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:

x x x x x x x x x

(o) Taxes, fees, or charges of any kind on the National Government, its agencies and instrumentalities, and local government units." (*italics supplied*)

In view of the afore-quoted provision of the LGC, the doctrine in *Basco vs. Philippine Amusement and Gaming Corporation*[44]

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[42] Pimentel, *supra* note 20; "Brilliantes, Issues and Trends in Local Governance in the Philippines," The Local Government Code: An Assessment" (1999) at 3.

[43] *Supra* note 41.

[44] *Supra* note 26.

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relied upon by the petitioner to support its claim no longer applies. To emphasize, the *Basco* case was decided prior to the effectivity of the LGC, when no law empowering the local government units to tax instrumentalities of the National Government was in effect. However, as this Court ruled in the case of *Mactan Cebu International Airport Authority (MCIAA) vs. Marcos*,[45] nothing prevents Congress from decreeing that even instrumentalities or agencies of the government performing governmental functions may be subject to tax.[46] In enacting the LGC, Congress exercised its prerogative to tax instrumentalities and agencies of government as it sees fit. Thus, after reviewing the specific provisions of the LGC, this Court held that MCIAA, although an instrumentality of the national government, was subject to real property tax, *viz*:

"Thus, reading together Sections 133, 232, and 234 of the LGC, we conclude that as a general rule, as laid down in section 133, the taxing power of local governments cannot extend to the levy of *inter alia,* 'taxes, fees and charges of any kind on the national government, its agencies and instrumentalities, and local government units'; however, pursuant to Section 232, provinces, cities and municipalities in the Metropolitan Manila Area may impose the real property tax except on, *inter alia*, 'real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted for consideration or otherwise, to a taxable person as provided in the item (a) of the first paragraph of Section 12.'"[47]

In the case at bar, Section 151 in relation to Section 137 of the LGC clearly authorizes the respondent city government to impose on the petitioner the franchise tax in question.

In its general signification, a franchise is a privilege conferred by government authority, which does not belong to citizens of the country generally as a matter of common right.[48] In its

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[45] *Supra* note 34.

[46] *Id.* at 692.

[47] *Id.* at 686.

[48] *J.R. S. Business Corp., et al. vs. Ofilada, et al.*, 120 Phil. 618, 628 (1964).

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specific sense, a franchise may refer to a general or primary franchise, or to a special or secondary franchise. The former relates to the right to exist as a corporation, by virtue of duly approved articles of incorporation, or a charter pursuant to a special law creating the corporation.[49] The right under a primary or general franchise is vested in the individuals who compose the corporation and not in the corporation itself.[50] On the other hand, the latter refers to the right or privileges conferred upon an existing corporation such as the right to use the streets of a municipality to lay pipes of tracks, erect poles or string wires.[51] The rights under a secondary or special franchise are vested in the corporation and may ordinarily be conveyed or mortgaged under a general power granted to a corporation to dispose of its property, except such special or secondary franchises as are charged with a public use.[52]

In Section 131 (m) of the LGC, Congress unmistakably defined a franchise in the sense of a secondary or special franchise. This is to avoid any confusion when the word franchise is used in the context of taxation. As commonly used, a *franchise tax* is "a tax on the privilege of transacting business in the state and exercising corporate franchises granted by the state."[53] It is not levied on the corporation simply for existing as a corporation, upon its property[54] or its income,[55] but on its exercise of the rights or privileges granted to it by the government. Hence, a corporation need not pay franchise tax from the time it ceased

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[49] J. Campos, Jr., I *Corporation Code* (1990) at 2.

[50] *Supra* note 48.

[51] *Ibid.*

[52] *Ibid.*

[53] *People v. Knight*, 67 N.E. 65, 66, 174 N.Y. 475, 63 L.R.A. 87.

[54] *Tremont & Sufflok Mills v. City of Lowell*, 59 N.E. 1007, 178 Mass. 469.

[55] *United North & South Development Co. v. Health,* Tex. Civ. App., 78 S.W.2d 650, 652.

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to do business and exercise its franchise.[56] It is within this context that the phrase "*tax on businesses enjoying a franchise*" in Section 137 of the LGC should be interpreted and understood. Verily, to determine whether the petitioner is covered by the franchise tax in question, the following requisites should concur: (1) that petitioner has a "franchise" in the sense of a secondary or special franchise; and (2) that it is exercising its rights or privileges under this franchise within the territory of the respondent city government.

Petitioner fulfills the first requisite. Commonwealth Act No. 120, as amended by Rep. Act No. 7395, constitutes petitioner's primary and secondary franchises. It serves as the petitioner's charter, defining its composition, capitalization, the appointment and the specific duties of its corporate officers, and its corporate life span.[57] As its secondary franchise, Commonwealth Act No. 120, as amended, vests the petitioner the following powers which are not available to ordinary corporations, *viz*:

"x x x x x x x x x

(e) To conduct investigations and surveys for the development of water power in any part of the Philippines;

(f) To take water from any public stream, river, creek, lake, spring or waterfall in the Philippines, for the purposes specified in this Act; to intercept and divert the flow of waters from lands of riparian owners and from persons owning or interested in waters which are or may be necessary for said purposes, upon payment of just compensation therefor; to alter, straighten, obstruct or increase the flow of water in streams or water channels intersecting or connecting therewith or contiguous to its works or any part thereof. Provided, That just compensation shall be paid to any person or persons whose property is, directly or indirectly, adversely affected or damaged thereby;

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[56] *In re Commercial Safe Deposit Co. of Buffalo*, 266 N.Y.S. 626, 148 Misc. 527.

[57] Rep. Act No. 6395, Sec. 2 extends NAPOCOR's corporate existence "for fifty years from and after the expiration of its present corporate existence."

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(g) To construct, operate and maintain power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations and substations, and other works for the purpose of developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof, to acquire, construct, install, maintain, operate, and improve gas, oil, or steam engines, and/or other prime movers, generators and machinery in plants and/or auxiliary plants for the production of electric power; to establish, develop, operate, maintain and administer power and lighting systems for the transmission and utilization of its power generation; to sell electric power in bulk to (1) industrial enterprises, (2) city, municipal or provincial systems and other government institutions, (3) electric cooperatives, (4) franchise holders, and (5) real estate subdivisions x x x;

(h) To acquire, promote, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of property incident to, or necessary, convenient or proper to carry out the purposes for which the Corporation was created: Provided, That in case a right of way is necessary for its transmission lines, easement of right of way shall only be sought: Provided, however, That in case the property itself shall be acquired by purchase, the cost thereof shall be the fair market value at the time of the taking of such property;

(i) To construct works across, or otherwise, any stream, watercourse, canal, ditch, flume, street, avenue, highway or railway of private and public ownership, as the location of said works may require x x x;

(j) To exercise the right of eminent domain for the purpose of this Act in the manner provided by law for instituting condemnation proceedings by the national, provincial and municipal governments;

x x x x x x x x x

(m) To cooperate with, and to coordinate its operations with those of the National Electrification Administration and public service entities;

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(n) To exercise complete jurisdiction and control over watersheds surrounding the reservoirs of plants and/or projects constructed or proposed to be constructed by the Corporation. Upon determination by the Corporation of the areas required for watersheds for a specific project, the Bureau of Forestry, the Reforestation Administration and the Bureau of Lands shall, upon written advice by the Corporation, forthwith surrender jurisdiction to the Corporation of all areas embraced within the watersheds, subject to existing private rights, the needs of waterworks systems, and the requirements of domestic water supply;

(o) In the prosecution and maintenance of its projects, the Corporation shall adopt measures to prevent environmental pollution and promote the conservation, development and maximum utilization of natural resources x x x"[58]

With these powers, petitioner eventually had the monopoly in the generation and distribution of electricity. This monopoly was strengthened with the issuance of Pres. Decree No. 40,[59] nationalizing the electric power industry. Although Exec. Order No. 215[60] thereafter allowed private sector participation in the generation of electricity, the transmission of electricity remains the monopoly of the petitioner.

Petitioner also fulfills the second requisite. It is operating within the respondent city government's territorial jurisdiction pursuant to the powers granted to it by Commonwealth Act No. 120, as amended. From its operations in the City of Cabanatuan, petitioner realized a gross income of ₱107,814,187.96 in 1992. Fulfilling both requisites, petitioner is, and ought to be, subject of the franchise tax in question.

Petitioner, however, insists that it is excluded from the coverage of the franchise tax simply because its stocks are

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[58] Rep. Act No. 6395, Sec. 3.

[59] "*Establishing Basic Policies for the Electric Power Industry.*" Issued by former President Ferdinand E. Marcos on November 7, 1972.

[60] "Amending Presidential Decree No. 40 and Allowing the Private Sector to Generate Electricity." Issued by former President Corazon C. Aquino on July 10, 1987.

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wholly owned by the National Government, and its charter characterized it as a "non-profit" organization.

These contentions must necessarily fail.

To stress, a franchise tax is imposed based not on the ownership but on the exercise by the corporation of a privilege to do business. The taxable entity is the corporation which exercises the franchise, and not the individual stockholders. By virtue of its charter, petitioner was created as a separate and distinct entity from the National Government. It can sue and be sued under its own name,[61] and can exercise all the powers of a corporation under the Corporation Code.[62]

To be sure, the ownership by the National Government of its entire capital stock does not necessarily imply that petitioner is not engaged in business. Section 2 of Pres. Decree No. 2029[63] classifies government-owned or controlled corporations (GOCCs) into those performing governmental functions and those performing proprietary functions, *viz*:

"A government-owned or controlled corporation is a stock or a non-stock corporation, *whether performing governmental or proprietary functions,* which is *directly chartered by special law* or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority of its outstanding voting capital stock xxx." (*italics supplied*)

Governmental functions are those pertaining to the administration of government, and as such, are treated as absolute obligation on the part of the state to perform while proprietary functions are those that are undertaken only by way of advancing the general interest of society, and are merely optional on the government.[64] Included in the class of GOCCs performing

[61] Rep. Act No. 6395, Sec. 3 (d).

[62] Rep. Act No. 6395, Sec. 4 (p) authorizes NAPOCOR to "exercise all the powers of a corporation under the Corporation Law insofar as they are not inconsistent with the provisions of this Act."

[63] Approved on February 4, 1986.

[64] *Social Security System Employees Association vs. Soriano*, 7 SCRA 1016, 1020 (1963).

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proprietary functions are "business-like" entities such as the National Steel Corporation (NSC), the National Development Corporation (NDC), the Social Security System (SSS), the Government Service Insurance System (GSIS), and the National Water Sewerage Authority (NAWASA),[65] among others.

Petitioner was created to "undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis."[66] Pursuant to this mandate, petitioner generates power and sells electricity in bulk. Certainly, these activities do not partake of the sovereign functions of the government. They are purely private and commercial undertakings, albeit imbued with public interest. The public interest involved in its activities, however, does not distract from the true nature of the petitioner as a commercial enterprise, in the same league with similar public utilities like telephone and telegraph companies, railroad companies, water supply and irrigation companies, gas, coal or light companies, power plants, ice plant among others; all of which are declared by this Court as ministrant or proprietary functions of government aimed at advancing the general interest of society.[67]

A closer reading of its charter reveals that even the legislature treats the character of the petitioner's enterprise as a "business," although it limits petitioner's profits to twelve percent (12%), *viz*:[68]

"(n) When essential to the proper administration of its corporate affairs or necessary for the proper transaction of its *business*

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[65] See *Boy Scouts of the Philippines vs. NLRC*, 196 SCRA 176, 185 (1991); *Shipside Incorporated vs. CA*, 352 SCRA 334, 350 (2001).

[66] Rep. Act No. 6395, Sec. 2.

[67] *National Waterworks & Sewerage Authority vs. NWSA Consolidated Unions*, 11 SCRA 766, 774 (1964).

[68] Rep. Act No. 7648, Sec. 4. The law, also known as "Electric Power Crisis Act," was signed on April 5, 1993.

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or to carry out the purposes for which it was organized, to contract indebtedness and issue bonds subject to approval of the President upon recommendation of the Secretary of Finance;

(o) To exercise such powers and do such things as may be reasonably necessary to carry out the *business and purposes* for which it was organized, or which, from time to time, may be declared by the Board to be necessary, useful, incidental or auxiliary to accomplish the said purpose . x x x"(*italics supplied*)

It is worthy to note that all other private franchise holders receiving at least sixty percent (60%) of its electricity requirement from the petitioner are likewise imposed the cap of twelve percent (12%) on profits.[69] The main difference is that the petitioner is mandated to devote "all its returns from its capital investment, as well as excess revenues from its operation, for expansion"[70] while other franchise holders have the option to distribute their profits to its stockholders by declaring dividends. We do not see why this fact can be a source of difference in tax treatment. In both instances, the taxable entity is the corporation, which exercises the franchise, and not the individual stockholders.

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[69] Rep. Act No. 6395, Sec. 14 reads: "Contract with Franchise Holders, Conditions of. — The Corporation shall, in any contract for the supply of electric power to a franchise holder, require as a condition that the franchise holder, if it receives at least sixty per cent of its electric power and energy from the Corporation, shall not realize a rate of return of more than twelve per cent annually on a rate base composed of the sum of its net assets in operation revalued from time to time, plus two-month operating capital, subject to the non-impairment-of-obligations-of-contracts provision of the Constitution: Provided, That in determining the rate of return, interest on loans, bonds and other debts shall not be included as expenses. It shall likewise be a condition in the contract that the Corporation shall cancel or revoke the contract upon judgment of the Public Service Commission after due hearing and upon a showing by customers of the franchise holder that household electrical appliances, have been damaged resulting from deliberate overloading by, or power deficiency of, the franchise holder. The Corporation shall renew all existing contracts with franchise holders for the supply of electric power and energy in order to give effect to the provisions hereof."

[70] Rep. Act No. 6395, Sec. 13.

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We also do not find merit in the petitioner's contention that its tax exemptions under its charter subsist despite the passage of the LGC.

As a rule, tax exemptions are construed strongly against the claimant. Exemptions must be shown to exist clearly and categorically, and supported by clear legal provisions.[71] In the case at bar, the petitioner's sole refuge is Section 13 of Rep. Act No. 6395 exempting from, among others, "all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities." However, Section 193 of the LGC withdrew, subject to limited exceptions, the sweeping tax privileges previously enjoyed by private and public corporations. Contrary to the contention of petitioner, Section 193 of the LGC is an express, albeit general, repeal of all statutes granting tax exemptions from local taxes.[72] It reads:

"Sec. 193. *Withdrawal of Tax Exemption Privileges. — Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations*, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code." (*italics supplied*)

It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*.[73] Not being a local water district, a cooperative registered under R.A. No. 6938, or a non-stock and non-profit hospital or educational institution, petitioner clearly does not belong to the exception. It is therefore incumbent upon the

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[71] *Commissioner of Internal Revenue v. Guerrero*, 21 SCRA 180 (1967).

[72] *City Government of San Pablo, Laguna v. Reyes*, 305 SCRA 353 (1999).

[73] *Commissioner of Customs vs. Court of Tax Appeals*, 251 SCRA 42, 56 (1995).

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petitioner to point to some provisions of the LGC that expressly grant it exemption from local taxes.

But this would be an exercise in futility. Section 137 of the LGC clearly states that the LGUs can impose franchise tax "*notwithstanding any exemption granted by any law or other special law*." This particular provision of the LGC does not admit any exception. In *City Government of San Pablo, Laguna v. Reyes*,[74] MERALCO's exemption from the payment of franchise taxes was brought as an issue before this Court. The same issue was involved in the subsequent case of *Manila Electric Company v. Province of Laguna*.[75] Ruling in favor of the local government in both instances, we ruled that the franchise tax in question is imposable despite any exemption enjoyed by MERALCO under special laws, *viz*:

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

Section 193 buttresses the withdrawal of extant tax exemption privileges. By stating that unless otherwise provided in this Code, tax exemptions or incentives granted to or presently enjoyed by all persons, whether natural or juridical, including government-owned or controlled corporations except (1) local water districts, (2) cooperatives duly registered under R.A. 6938, (3) non-stock and non-profit hospitals and educational institutions, are withdrawn upon the effectivity of this code, the obvious import is to limit the exemptions to the three enumerated entities. It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*. In the absence of any provision of the Code to the contrary, and we find no other provision in point,

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[74] *Supra* note 72.

[75] 306 SCRA 750 (1999).

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any existing tax exemption or incentive enjoyed by MERALCO under existing law was clearly intended to be withdrawn.

Reading together Sections 137 and 193 of the LGC, we conclude that under the LGC the local government unit may now impose a local tax at a rate not exceeding 50% of 1% of the gross annual receipts for the preceding calendar based on the incoming receipts realized within its territorial jurisdiction. The legislative purpose to withdraw tax privileges enjoyed under existing law or charter is clearly manifested by the language used on (sic) Sections 137 and 193 categorically withdrawing such exemption subject only to the exceptions enumerated. Since it would be not only tedious and impractical to attempt to enumerate all the existing statutes providing for special tax exemptions or privileges, the LGC provided for an express, albeit general, withdrawal of such exemptions or privileges. No more unequivocal language could have been used."[76] (*italics supplied*).

It is worth mentioning that Section 192 of the LGC empowers the LGUs, through ordinances duly approved, to grant tax exemptions, initiatives or reliefs.[77] But in enacting Section 37 of Ordinance No. 165-92 which imposes an annual franchise tax "notwithstanding any exemption granted by law or other special law," the respondent city government clearly did not intend to exempt the petitioner from the coverage thereof.

Doubtless, the power to tax is the most effective instrument to raise needed revenues to finance and support myriad activities of the local government units for the delivery of basic services essential to the promotion of the general welfare and the enhancement of peace, progress, and prosperity of the people. As this Court observed in the *Mactan* case, "the original reasons for the withdrawal of tax exemption privileges granted to government-owned or controlled corporations and all other units of government were that such privilege resulted in serious tax

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[76] *Supra* note 72 at 361-362.

[77] "Sec. 192. Authority to Grant Tax Exemption Privileges. — Local government units may, through ordinances duly approved, grant tax exemptions, incentives or reliefs under such terms and conditions as they may deem necessary."

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base erosion and distortions in the tax treatment of similarly situated enterprises."[78] With the added burden of devolution, it is even more imperative for government entities to share in the requirements of development, fiscal or otherwise, by paying taxes or other charges due from them.

IN VIEW WHEREOF, the instant petition is *DENIED* and the assailed Decision and Resolution of the Court of Appeals dated March 12, 2001 and July 10, 2001, respectively, are hereby *AFFIRMED*.

SO ORDERED.

Panganiban, Sandoval-Gutierrez, Corona, and *Carpio Morales, JJ.*, concur.

THIRD DIVISION

[G.R. No. 149422. April 10, 2003]

DEPARTMENT OF AGRARIAN REFORM, *petitioner, vs.* **APEX INVESTMENT AND FINANCING CORPORATION (now SM Investment Corporation)**, *respondent.*

SYNOPSIS

In 1994, pursuant to RA 6657, compulsory acquisition proceedings over several lots owned by respondent were initiated. Respondent, however, denied having received the Notice of Coverage and Notice of Acquisition. They learned of the same only from "*Balita*" and filed a Protest on the ground that their lots were residential. Only after more than one year from said Protest was it forwarded to the DAR. In the meantime, respondent's title had been cancelled and a new one issued to another. Thus, respondent filed a petition for *certiorari* and

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[78] Supre note 34 at 690.