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As such, We find no reason to disturb the ruling of the RTC that reconstitution of OCT No. 45361 is not warranted under the circumstances, albeit on a different ground.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. Accordingly, the Decision of the Court of Appeals dated November 8, 2013 and its Resolution dated April 29, 2014 in CA-G.R. CV No. 94720 are hereby **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court, Branch 40 in Dagupan City in Cad Case No. 2001-0043-D is hereby **REINSTATED**.

SO ORDERED.

Peralta, Villarama, Jr., Reyes, and *Perlas-Bernabe,*[*] *JJ.,* concur.

EN BANC

[G.R. No. 215427. December 10, 2014]

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), *petitioner, vs.* **THE BUREAU OF INTERNAL REVENUE, represented by JOSE MARIO BUÑAG, in his capacity as Commissioner of the Bureau of Internal Revenue, and JOHN DOE and JANE DOE, who are persons acting for, in behalf or under the authority of respondent,** *respondents.*

SYLLABUS

1. TAXATION; INCOME AND OTHER TAXES; THE INCOME OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR) FROM GAMING

[*] Additional member per raffle dated December 9, 2014.

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OPERATIONS IS SUBJECT ONLY TO FIVE PERCENT (5%) FRANCHISE TAX, WHILE ITS INCOME FROM OTHER RELATED SERVICES IS SUBJECT TO CORPORATE INCOME TAX.— [W]e sustain petitioner's contention that its income from gaming operations is subject only to five percent (5%) franchise tax under P.D. 1869, as amended, while its income from other related services is subject to corporate income tax pursuant to P.D. 1869, as amended, as well as R.A. No. 9337. This is demonstrable. [U]nder P.D. 1869, as amended, petitioner is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption ordained under Section 27(c) of R.A. No. 8424 clearly pertains only to petitioner's income from operation of related services. Such income tax exemption could not have been applicable to petitioner's income from gaming operations as it is already exempt therefrom under P.D. 1869, as amended x x x. Indeed, the grant of tax exemption or the withdrawal thereof assumes that the person or entity involved is subject to tax. This is the most sound and logical interpretation because petitioner could not have been exempted from paying taxes which it was not liable to pay in the first place. This is clear from the wordings of P.D. 1869, as amended, imposing a franchise tax of five percent (5%) on its gross revenue or earnings derived by petitioner from its operation under the Franchise *in lieu* of all taxes of any kind or form, as well as fees, charges or levies of whatever nature, which necessarily include corporate income tax. In other words, there was no need for Congress to grant tax exemption to petitioner with respect to its income from gaming operations as the same is already exempted from all taxes of any kind or form, income or otherwise, whether national or local, under its Charter, save only for the five percent (5%) franchise tax. The exemption attached to the income from gaming operations exists independently from the enactment of R.A. No. 8424.

2. STATUTORY CONSTRUCTION; STATUTES; EVERY EFFORT MUST BE EXERTED TO AVOID A CONFLICT BETWEEN STATUTES, SO THAT IF REASONABLE CONSTRUCTION IS POSSIBLE, THE LAWS MUST BE RECONCILED IN THAT MANNER; NO INCONSISTENCY BETWEEN P.D. NO. 1869 (PAGCOR CHARTER), AS AMENDED AND R.A. NO. 9337 (VAT REFORM ACT).— [E]very effort must be exerted

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to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner. As we see it, there is no conflict between P.D. 1869, as amended, and R.A. No. 9337. The former lays down the taxes imposable upon petitioner, as follows: (1) *a five percent (5%) franchise tax* of the gross revenues or earnings derived from its operations conducted under the Franchise, which shall be due and payable *in lieu* of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority; (2) *income tax* for income realized from other necessary and related services, shows and entertainment of petitioner. With the enactment of R.A. No. 9337, which withdrew the income tax exemption under R.A. No. 8424, petitioner's tax liability on income from other related services was merely reinstated. It cannot be gainsaid, therefore, that the nature of taxes imposable is well defined for each kind of activity or operation. There is no inconsistency between the statutes; and in fact, they complement each other.

3. ID.; ID.; A SPECIAL LAW PREVAILS OVER A GENERAL LAW, REGARDLESS OF THEIR DATES OF PASSAGE, AND THE SPECIAL IS TO BE CONSIDERED AS REMAINING AN EXCEPTION TO THE GENERAL; RATIONALE; P.D. NO. 1869 PREVAILS OVER R.A. NO. 9337.— Even assuming that an inconsistency exists, P.D. 1869, as amended, which expressly provides the tax treatment of petitioner's income prevails over R.A. No. 9337, which is a general law. It is a canon of statutory construction that a special law prevails over a general law — regardless of their dates of passage — and the special is to be considered as remaining an exception to the general. The *rationale* is: Why a special law prevails over a general law has been put by the Court as follows: x x x The Legislature consider and make provision for all the circumstances of the particular case. ***The Legislature having specially considered all of the facts and circumstances in the particular case in granting a special charter, it will not be considered that the Legislature, by adopting a general law containing provisions repugnant to the provisions of the charter, and without making any mention of its intention to amend or modify the charter, intended to amend, repeal, or modify the special act.***

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4. ID.; ID.; WHERE A GENERAL LAW IS ENACTED TO REGULATE AN INDUSTRY, IT IS COMMON FOR INDIVIDUAL FRANCHISES SUBSEQUENTLY GRANTED TO RESTATE THE RIGHTS AND PRIVILEGES ALREADY MENTIONED IN THE GENERAL LAW, OR TO AMEND THE LATER LAW, AS MAY BE NEEDED, TO CONFORM TO THE GENERAL LAW; HOWEVER, IF NO PROVISION OR AMENDMENT IS STATED IN THE FRANCHISE TO EFFECT THE PROVISIONS OF THE GENERAL LAW, IT CANNOT BE SAID THAT THE SAME IS THE INTENT OF THE LAWMAKERS, FOR REPEAL OF LAWS BY IMPLICATION IS NOT FAVORED; TAX EXEMPTION OF PAGCOR'S GAMING INCOME NOT REPEALED BY R.A. NO. 9337.— Where a general law is enacted to regulate an industry, it is common for individual franchises subsequently granted to restate the rights and privileges already mentioned in the general law, or to amend the later law, as may be needed, to conform to the general law. However, if no provision or amendment is stated in the franchise to effect the provisions of the general law, it cannot be said that the same is the intent of the lawmakers, for repeal of laws by implication is not favored. In this regard, we agree with petitioner that if the lawmakers had intended to withdraw petitioner's tax exemption of its gaming income, then Section 13(2)(a) of P.D. 1869 should have been amended expressly in R.A. No. 9487, or the same, at the very least, should have been mentioned in the repealing clause of R.A. No. 9337. However, the repealing clause never mentioned petitioner's Charter as one of the laws being repealed. x x x. When petitioner's franchise was extended on June 20, 2007 without revoking or withdrawing its tax exemption, it effectively reinstated and reiterated all of petitioner's rights, privileges and authority granted under its Charter. Otherwise, Congress would have painstakingly enumerated the rights and privileges that it wants to withdraw, given that a franchise is a legislative grant of a special privilege to a person. Thus, the extension of petitioner's franchise under the same terms and conditions means a continuation of its tax exempt status with respect to its income from gaming operations.

5. ID.; ID.; IN CASE OF DISCREPANCY BETWEEN THE BASIC LAW AND A RULE OR REGULATION ISSUED TO IMPLEMENT SAID LAW, THE BASIC LAW PREVAILS,

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BECAUSE THE SAID RULE OR REGULATION CANNOT GO BEYOND THE TERMS AND PROVISIONS OF THE BASIC LAW; RMC NO. 33-2013 SUBJECTING PAGCOR'S INCOME FROM GAMING OPERATIONS AND OTHER RELATED SERVICES TO INCOME TAX AND FIVE PERCENT (5%) FRANCHISE TAX, STRUCK DOWN.— [R]espondent x x x committed grave abuse of discretion amounting to lack of jurisdiction when it issued RMC No. 33-2013 subjecting both income from gaming operations and other related services to corporate income tax and five percent (5%) franchise tax. This unduly expands our Decision dated March 15, 2011 without due process since the imposition creates additional burden upon petitioner. Such act constitutes an overreach on the part of the respondent, which should be immediately struck down, lest grave injustice results. More, it is settled that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because the said rule or regulation cannot go beyond the terms and provisions of the basic law.

APPEARANCES OF COUNSEL

Carlos R. Bautista, Jr., Roderick R. Consolacion and Arnold Ferdinand C. Salvosa for petitioner.

The Solicitor General for respondents.

D E C I S I O N

PERALTA, *J.*:

The present petition stems from the Motion for Clarification filed by petitioner Philippine Amusement and Gaming Corporation *(PAGCOR)* on September 13, 2013 in the case entitled *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, et al.*,[1] which was promulgated on March 15, 2011. The Motion for Clarification essentially prays for the clarification of our Decision in the aforesaid case, as well the issuance of a Temporary Restraining Order and/or Writ of Preliminary

[1] G.R. No. 172087, 645 SCRA 338.

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Injunction against the Bureau of Internal Revenue (*BIR*), their employees, agents and any other persons or entities acting or claiming any right on BIR's behalf, in the implementation of BIR Revenue Memorandum Circular (*RMC*) No. 33-2013 dated April 17, 2013.

At the onset, it bears stressing that while the instant motion was denominated as a "Motion for Clarification," in the session of the Court *En Banc* held on November 25, 2014, the members thereof ruled to treat the same as a new petition for *certiorari* under Rule 65 of the Rules of Court, given that petitioner essentially alleges grave abuse of discretion on the part of the BIR amounting to lack or excess of jurisdiction in issuing RMC No. 33-2013. Consequently, a new docket number has been assigned thereto, while petitioner has been ordered to pay the appropriate docket fees pursuant to the Resolution dated November 25, 2014, the pertinent portion of which reads:

G.R. No. 172087 (*Philippine Amusement and Gaming Corporation vs. Bureau of Internal Revenue, et al.*). – The Court Resolved to

(a) **TREAT** as a new petition the Motion for Clarification with Temporary Restraining Order and/or Preliminary Injunction Application dated September 6, 2013 filed by PAGCOR;

(b) **DIRECT** the Judicial Records Office to **RE-DOCKET** the aforesaid Motion for Clarification, subject to payment of the appropriate docket fees; and

(c) **REQUIRE** petitioner PAGCOR to **PAY** the filing fees for the subject Motion for Clarification within five (5) days from notice hereof. Brion, J., no part and on leave. Perlas-Bernabe, J., on official leave.

Considering that the parties have filed their respective pleadings relative to the instant petition, and the appropriate docket fees have been duly paid by petitioner, this Court considers the instant petition submitted for resolution.

The facts are briefly summarized as follows:

On April 17, 2006, petitioner filed before this Court a *Petition for Review on Certiorari and Prohibition (With Prayer for the*

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Issuance of a Temporary Restraining Order and/or Preliminary Injunction) seeking the declaration of nullity of Section 1[2] of Republic Act *(R.A.)* No. 9337[3] insofar as it amends Section 27(C)[4] of R.A. No. 8424,[5] otherwise known as the National Internal Revenue Code (*NIRC*) by excluding petitioner from the enumeration of government-owned or controlled corporations *(GOCCs)* exempted from liability for corporate income tax.

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[2] Section 1. Section 27 of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 27. *Rates of Income Tax on Domestic Corporations.* –

x x x x x x x x x

"(C) Government-owned or Controlled Corporations, Agencies or Instrumentalities. – The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, ***except the Government Service and Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), and the Philippine Charity Sweepstakes Office (PCSO)***, shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.

x x x." (Emphasis supplied)

[3] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES. The Act took effect on **July 1, 2005**.

[4] **SEC. 27.** ***Rates of Income tax on Domestic Corporations. –***

x x x x x x x x x

(C) Government-owned or Controlled Corporations, Agencies or Instrumentalities – The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, ***except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR)***, shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in similar business, industry, or activity.

x x x (Emphasis supplied)

[5] The Act took effect on **January 1, 1998.**

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On March 15, 2011, this Court rendered a Decision[6] granting in part the petition filed by petitioner. Its *fallo* reads:

WHEREFORE, the petition is **PARTLY GRANTED**. Section 1 of Republic Act No. 9337, amending Section 27(c) of the National Internal Revenue Code of 1997, by excluding petitioner Philippine Amusement and Gaming Corporation from the enumeration of government-owned and controlled corporations exempted from corporate income tax is valid and constitutional, while BIR Revenue Regulations No. 16-2005 insofar as it subjects PAGCOR to 10% VAT is null and void for being contrary to the National Internal Revenue Code of 1997, as amended by Republic Act No. 9337.

No costs.

SO ORDERED.[7]

Both petitioner and respondent filed their respective motions for partial reconsideration, but the same were denied by this Court in a Resolution[8] dated May 31, 2011.

Resultantly, respondent issued RMC No. 33-2013 on April 17, 2013 pursuant to the Decision dated March 15, 2011 and the Resolution dated May 31, 2011, which clarifies the "Income Tax and Franchise Tax Due from the Philippine Amusement and Gaming Corporation (PAGCOR), its Contractees and Licensees." Relevant portions thereof state:

II. INCOME TAX

Pursuant to Section 1 of R.A. 9337, amending Section 27(C) of the NIRC, as amended, PAGCOR is no longer exempt from corporate income tax as it has been effectively omitted from the list of government-owned or controlled corporations (GOCCs) that are exempt from income tax. Accordingly, PAGCOR's income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, and other related operations, are subject to corporate income tax under the NIRC, as amended. This includes, among others:

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[6] *Rollo*, pp. 400-424.

[7] *Id.* at 422-423. (Emphasis in the original)

[8] *Id.* at 473.

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a) Income from its casino operations;
b) Income from dollar pit operations;
c) Income from regular bingo operations; and
d) Income from mobile bingo operations operated by it, with agents on commission basis. Provided, however, that the agents' commission income shall be subject to regular income tax, and consequently, to withholding tax under existing regulations.

Income from "other related operations" includes, but is not limited to:

a) Income from licensed private casinos covered by authorities to operate issued to private operators;
b) Income from traditional bingo, electronic bingo and other bingo variations covered by authorities to operate issued to private operators;
c) Income from private internet casino gaming, internet sports betting and private mobile gaming operations;
d) Income from private poker operations;
e) Income from junket operations;
f) Income from SM demo units; and
g) Income from other necessary and related services, shows and entertainment.

PAGCOR's other income that is not connected with the foregoing operations are likewise subject to corporate income tax under the NIRC, as amended.

PAGCOR's contractees and licensees are entities duly authorized and licensed by PAGCOR to perform gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools. These contractees and licensees are subject to income tax under the NIRC, as amended.

III. FRANCHISE TAX

Pursuant to Section 13(2) (a) of P.D. No. 1869,[9] PAGCOR is subject to a franchise tax of five percent (5%) of the gross revenue or earnings

[9] CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR). This Act took effect on **July 11, 1983**. It was later amended by R.A. No. 9487, AN ACT FURTHER

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AMENDING PRESIDENTIAL DECREE NO. 1869, OTHERWISE KNOWN AS PAGCOR CHARTER, which was approved on **June 20, 2007**. R.A No. 9487 essentially extended the term of PAGCOR for another twenty-five (25) years, renewable for another twenty-five (25) years, to wit:

SECTION 1. The Philippine Amusement and Gaming Corporation (PAGCOR) franchise granted under Presidential Decree No. 1869, otherwise known as the PAGCOR Charter, is hereby further amended to read as follows:

(1) Section 10, Nature and Term of Franchise, is hereby amended to read as follows:

"SEC. 10. *Nature and Term of Franchise*. – Subject to the terms and conditions established in this Decree, the Corporation is hereby granted from the expiration of its original term on July 11, 2008, another period of twenty-five (25) years, renewable for another twenty-five (25) years, the rights, privileges and authority to operate and license gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, *i.e.*, basketball, football, bingo, *etc.*, except jai-alai, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines: *Provided*, That the corporation shall obtain the consent of the local government unit that has territorial jurisdiction over the area chosen as the site for any of its operations.

"The operation of slot machines and other gambling paraphernalia and equipment, shall not be allowed in establishments open or accessible to the general public unless the site of these operations are three-star hotels and resorts accredited by the Department of Tourism authorized by the corporation and by the local government unit concerned.

"The authority and power of the PAGCOR to authorize, license and regulate games of chance, games of cards and games of numbers shall not extend to: (1) games of chance authorized, licensed and regulated or to be authorized, licensed and regulated by, in, and under existing franchises or other regulatory bodies; (2) games of chance, games of cards and games of numbers authorized, licensed, regulated by, in, and under special laws such as Republic Act No. 7922; and (3) games of chance, games of cards and games of numbers, like cockfighting, authorized, licensed and regulated by local government units. The conduct of such games of chance, games of cards and games of numbers covered by existing franchises, regulatory bodies or special laws, to the extent of the jurisdiction and powers granted under such franchises and special laws, shall be outside the licensing authority and regulatory powers of the PAGCOR."

(2) Section 3(h) is hereby amended to read as follows:

"SEC. 3. *Corporate Powers*. –

"x x x

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it derives from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, and other related operations as described above.

On May 20, 2011, petitioner wrote the BIR Commissioner requesting for reconsideration of the tax treatment of its income from gaming operations and other related operations under RMC No. 33-2013. The request was, however, denied by the BIR Commissioner.

On August 4, 2011, the Decision dated March 15, 2011 became final and executory and was, accordingly, recorded in the Book of Entries of Judgment.[10]

Consequently, petitioner filed a *Motion for Clarification* alleging that RMC No. 33-2013 is an erroneous interpretation and application of the aforesaid Decision, and seeking clarification with respect to the following:

1. Whether PAGCOR's tax privilege of paying 5% franchise tax *in lieu* of all other taxes with respect to its gaming income, pursuant to its Charter – P.D. 1869, as amended by R.A. 9487, is deemed repealed or amended by Section 1 (c) of R.A. 9337.
2. If it is deemed repealed or amended, whether PAGCOR's gaming income is subject to both 5% franchise tax and income tax.
3. Whether PAGCOR's income from operation of related services is subject to both income tax and 5% franchise tax.
4. Whether PAGCOR's tax privilege of paying 5% franchise tax inures to the benefit of third parties with contractual relationship with PAGCOR in connection with the operation of casinos.[11]

"(h) to enter into, make, conclude, perform, and carry out contracts of every kind and nature and for any lawful purpose which are necessary, appropriate, proper or incidental to any business or purpose of the PAGCOR, including but not limited to investment agreements, joint venture agreements, management agreements, agency agreements, whether as principal or as an agent, manpower supply agreements, or any other similar agreements or arrangements with any person, firm, association or corporation."

[10] *Rollo*, pp. 474-475.

[11] *Id.* at 508-509.

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In our Decision dated March 15, 2011, we have already declared petitioner's income tax liability in view of the withdrawal of its tax privilege under R.A. No. 9337. However, we made no distinction as to which income is subject to corporate income tax, considering that the issue raised therein was only the constitutionality of Section 1 of R.A. No. 9337, which excluded petitioner from the enumeration of GOCCs exempted from corporate income tax.

For clarity, it is worthy to note that under P.D. 1869, as amended, PAGCOR's income is classified into two: (1) income from its operations conducted under its Franchise, pursuant to Section 13(2) (b) thereof *(income from gaming operations)*; and (2) income from its operation of necessary and related services under Section 14(5) thereof *(income from other related services)*. In RMC No. 33-2013, respondent further classified the aforesaid income as follows:

1. PAGCOR's ***income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools***, includes, among others:

    (a) Income from its casino operations;
    (b) Income from dollar pit operations;
    (c) Income from regular bingo operations; and
    (d) Income from mobile bingo operations operated by it, with agents on commission basis. Provided, however, that the agents' commission income shall be subject to regular income tax, and consequently, to withholding tax under existing regulations.

2. ***Income from "other related operations"*** includes, but is not limited to:

    (a) Income from licensed private casinos covered by authorities to operate issued to private operators;
    (b) Income from traditional bingo, electronic bingo and other bingo variations covered by authorities to operate issued to private operators;
    (c) Income from private internet casino gaming, internet sports betting and private mobile gaming operations;
    (d) Income from private poker operations;
    (e) Income from junket operations;

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(f) Income from SM demo units; and
(g) Income from other necessary and related services, shows and entertainment.[12]

After a thorough study of the arguments and points raised by the parties, and in accordance with our Decision dated March 15, 2011, we sustain petitioner's contention that its income from gaming operations is subject only to five percent (5%) franchise tax under P.D. 1869, as amended, while its income from other related services is subject to corporate income tax pursuant to P.D. 1869, as amended, as well as R.A. No. 9337. This is demonstrable.

First. Under P.D. 1869, as amended, petitioner is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption ordained under Section 27(c) of R.A. No. 8424 clearly pertains only to petitioner's income from operation of related services. Such income tax exemption could not have been applicable to petitioner's income from gaming operations as it is already exempt therefrom under P.D. 1869, as amended, to wit:

SECTION 13. Exemptions. –

x x x x x x x x x

(2) Income and other taxes. — (a) Franchise Holder: ***No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation***; ***nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise***. Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.[13]

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[12] Emphasis supplied.

[13] Emphasis supplied.

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Indeed, the grant of tax exemption or the withdrawal thereof assumes that the person or entity involved is subject to tax. This is the most sound and logical interpretation because petitioner could not have been exempted from paying taxes which it was not liable to pay in the first place. This is clear from the wordings of P.D. 1869, as amended, imposing a franchise tax of five percent (5%) on its gross revenue or earnings derived by petitioner from its operation under the Franchise *in lieu* of all taxes of any kind or form, as well as fees, charges or levies of whatever nature, which necessarily include corporate income tax.

In other words, there was no need for Congress to grant tax exemption to petitioner with respect to its income from gaming operations as the same is already exempted from all taxes of any kind or form, income or otherwise, whether national or local, under its Charter, save only for the five percent (5%) franchise tax. The exemption attached to the income from gaming operations exists independently from the enactment of R.A. No. 8424. To adopt an assumption otherwise would be downright ridiculous, if not deleterious, since petitioner would be in a worse position if the exemption was granted (then withdrawn) than when it was not granted at all in the first place.

Moreover, as may be gathered from the legislative records of the Bicameral Conference Meeting of the Committee on Ways and Means dated October 27, 1997, the exemption of petitioner from the payment of corporate income tax was due to the acquiescence of the Committee on Ways and Means to the request of petitioner that it be exempt from such tax. Based on the foregoing, it would be absurd for petitioner to seek exemption from income tax on its gaming operations when under its Charter, it is already exempted from paying the same.

Second. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in that manner.[14]

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[14] *Lopez v. The Civil Service Commission,* 273 Phil. 147, 152 (1991).

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As we see it, there is no conflict between P.D. 1869, as amended, and R.A. No. 9337. The former lays down the taxes imposable upon petitioner, as follows: (1) *a five percent (5%) franchise tax* of the gross revenues or earnings derived from its operations conducted under the Franchise, which shall be due and payable *in lieu* of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority;[15] (2) *income tax* for income realized from other necessary and related services, shows and entertainment of petitioner.[16] With the enactment of R.A. No. 9337, which withdrew the income tax exemption under R.A. No. 8424, petitioner's tax liability on income from other related services was merely reinstated.

It cannot be gainsaid, therefore, that the nature of taxes imposable is well defined for each kind of activity or operation. There is no inconsistency between the statutes; and in fact, they complement each other.

Third. Even assuming that an inconsistency exists, P.D. 1869, as amended, which expressly provides the tax treatment of petitioner's income prevails over R.A. No. 9337, which is a general law. It is a canon of statutory construction that a special law prevails over a general law — regardless of their dates of passage — and the special is to be considered as remaining an exception to the general.[17] The *rationale* is:

> Why a special law prevails over a general law has been put by the Court as follows:
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> x x x x x x x x x
>
> x x x The Legislature consider and make provision for all the circumstances of the particular case. ***The Legislature having specially considered all of the facts and circumstances in the particular case in granting a special charter, it will not be***

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[15] P.D. No. 1869, Sec. 13(2).

[16] P.D. No. 1869, Sec. 14(5).

[17] *Lopez v. The Civil Service Commission*, *supra* note 14.

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considered that the Legislature, by adopting a general law containing provisions repugnant to the provisions of the charter, and without making any mention of its intention to amend or modify the charter, intended to amend, repeal, or modify the special act. (*Lewis vs. Cook County*, 74 I11. App., 151; *Philippine Railway Co. vs. Nolting* 34 Phil., 401.)[18]

Where a general law is enacted to regulate an industry, it is common for individual franchises subsequently granted to restate the rights and privileges already mentioned in the general law, or to amend the later law, as may be needed, to conform to the general law.[19] However, if no provision or amendment is stated in the franchise to effect the provisions of the general law, it cannot be said that the same is the intent of the lawmakers, for repeal of laws by implication is not favored.[20]

In this regard, we agree with petitioner that if the lawmakers had intended to withdraw petitioner's tax exemption of its gaming income, then Section 13(2)(a) of P.D. 1869 should have been amended expressly in R.A. No. 9487, or the same, at the very least, should have been mentioned in the repealing clause of R.A. No. 9337.[21] However, the repealing clause never mentioned petitioner's Charter as one of the laws being repealed. On the other hand, the repeal of other special laws, namely, Section 13 of R.A. No. 6395 as well as Section 6, fifth paragraph of R.A. No. 9136, is categorically provided under Section 24(a) (b) of R.A. No. 9337, to wit:

SEC. 24. *Repealing Clause*. – The following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:

(A) ***Section 13 of R.A. No. 6395 on the exemption from value-added tax of the National Power Corporation (NPC);***

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[18] *Id.*

[19] Separate Opinion of Justice Antonio T. Carpio in *PLDT v. City of Davao*, 447 Phil. 571, 598 (2003).

[20] *Lopez v. Civil Service Commission, supra* note 17.

[21] *Rollo*, p. 498.

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(B) ***Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies***; and

(C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.[22]

When petitioner's franchise was extended on June 20, 2007 without revoking or withdrawing its tax exemption, it effectively reinstated and reiterated all of petitioner's rights, privileges and authority granted under its Charter. Otherwise, Congress would have painstakingly enumerated the rights and privileges that it wants to withdraw, given that a franchise is a legislative grant of a special privilege to a person. Thus, the extension of petitioner's franchise under the same terms and conditions means a continuation of its tax exempt status with respect to its income from gaming operations. Moreover, all laws, rules and regulations, or parts thereof, which are inconsistent with the provisions of P.D. 1869, as amended, a special law, are considered repealed, amended and modified, consistent with Section 2 of R.A. No. 9487, thus:

SECTION 2. *Repealing Clause*. – All laws, decrees, executive orders, proclamations, rules and regulations and other issuances, or parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed, amended and modified.

It is settled that where a statute is susceptible of more than one interpretation, the court should adopt such reasonable and beneficial construction which will render the provision thereof operative and effective, as well as harmonious with each other.[23]

Given that petitioner's Charter is not deemed repealed or amended by R.A. No. 9337, petitioner's income derived from

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[22] Emphasis supplied.

[23] R. Agpalo, *Statutory Construction* (3rd ed., 1995), p. 199; citing *Javellana v. Tayo*, 116 Phil. 1342, 1351 (1962); *Radiola-Toshiba Phil., Inc. v. IAC*, 276 Phil. 404, 412 (1991).

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gaming operations is subject only to the five percent (5%) franchise tax, in accordance with P.D. 1869, as amended. With respect to petitioner's income from operation of other related services, the same is subject to income tax only. The five percent (5%) franchise tax finds no application with respect to petitioner's income from other related services, in view of the express provision of Section 14(5) of P.D. 1869, as amended, to wit:

> Section 14. Other Conditions.
>
> x x x x x x x x x
>
> (5) Operation of related services. — The Corporation is authorized to operate such necessary and related services, shows and entertainment. ***Any income that may be realized from these related services shall not be included as part of the income of the Corporation for the purpose of applying the franchise tax***, but the same shall be considered as a separate income of the Corporation and shall be subject to income tax.[24]

Thus, it would be the height of injustice to impose franchise tax upon petitioner for its income from other related services without basis therefor.

For proper guidance, the first classification of PAGCOR's income under RMC No. 33-2013 (*i.e.*, income from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gambling pools) should be interpreted in relation to Section 13(2) of P.D. 1869, which pertains to the income derived from issuing and/or granting the license to operate casinos to PAGCOR's contractees and licensees, as well as earnings derived by PAGCOR from its own operations under the Franchise. On the other hand, the second classification of PAGCOR's income under RMC No. 33-2013 (*i.e.*, income from other related operations) should be interpreted in relation to Section 14(5) of P.D. 1869, which pertains to income received by PAGCOR from its contractees and licensees in the latter's operation of casinos, as well as

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[24] Emphasis supplied.

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PAGCOR's own income from operating necessary and related services, shows and entertainment.

As to whether petitioner's tax privilege of paying five percent (5%) franchise tax inures to the benefit of third parties with contractual relationship with petitioner in connection with the operation of casinos, we find no reason to rule upon the same. The resolution of the instant petition is limited to clarifying the tax treatment of petitioner's income *vis-à-vis* our Decision dated March 15, 2011. This Decision is not meant to expand our original Decision by delving into new issues involving petitioner's contractees and licensees. For one, the latter are not parties to the instant case, and may not therefore stand to benefit or bear the consequences of this resolution. For another, to answer the fourth issue raised by petitioner relative to its contractees and licensees would be downright premature and iniquitous as the same would effectively countenance sidesteps to judicial process.

In view of the foregoing disquisition, respondent, therefore, committed grave abuse of discretion amounting to lack of jurisdiction when it issued RMC No. 33-2013 subjecting both income from gaming operations and other related services to corporate income tax and five percent (5%) franchise tax. This unduly expands our Decision dated March 15, 2011 without due process since the imposition creates additional burden upon petitioner. Such act constitutes an overreach on the part of the respondent, which should be immediately struck down, lest grave injustice results. More, it is settled that in case of discrepancy between the basic law and a rule or regulation issued to implement said law, the basic law prevails, because the said rule or regulation cannot go beyond the terms and provisions of the basic law.

In fine, we uphold our earlier ruling that Section 1 of R.A. No. 9337, amending Section 27(c) of R.A. No. 8424, by excluding petitioner from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional. In addition, we hold that:

1. Petitioner's tax privilege of paying five percent (5%) franchise tax *in lieu* of all other taxes with respect to

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its income from gaming operations, pursuant to P.D. 1869, as amended, is *not* repealed or amended by Section 1(c) of R.A. No. 9337;

2. Petitioner's income from gaming operations is subject to the five percent (5%) franchise tax only; and

3. Petitioner's income from other related services is subject to corporate income tax only.

In view of the above-discussed findings, this Court **ORDERS** the respondent to cease and desist the implementation of RMC No. 33-2013 insofar as it imposes: (1) corporate income tax on petitioner's income derived from its gaming operations; and (2) franchise tax on petitioner's income from other related services.

WHEREFORE, the Petition is hereby **GRANTED**. Accordingly, respondent is **ORDERED** to cease and desist the implementation of RMC No. 33-2013 insofar as it imposes: (1) corporate income tax on petitioner's income derived from its gaming operations; and (2) franchise tax on petitioner's income from other related services.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, del Castillo, Villarama, Jr., Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Bersamin and *Perez, JJ.,* on official leave, but left their votes of concurrence with the *ponencia*.

Brion and *Jardeleza, JJ.,* no part.