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[G.R. No. 172087. March 15, 2011]

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), *petitioner, vs.* **THE BUREAU OF INTERNAL REVENUE (BIR), represented herein by HON. JOSE MARIO BUÑAG, in his official capacity as COMMISSIONER OF INTERNAL REVENUE,** public *respondent,*

JOHN DOE and **JANE DOE, who are persons acting for, in behalf, or under the authority of Respondent,** public and private *respondents*.

SYLLABUS

1. **TAXATION; TAX EXEMPTIONS; CONSTRUED STRONGLY AGAINST THE CLAIMANT.—** Taxation is the rule and exemption is the exception. The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed. 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 provision.

2. **ID.; TAX ON CORPORATIONS; CORPORATE INCOME TAX; THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION IS NOT EXEMPT FROM THE PAYMENT OF CORPORATE INCOME TAX.—** In this case, PAGCOR failed to prove that it is still exempt from the payment of corporate income tax, considering that Section 1 of R.A. No. 9337 amended Section 27 (c) of the National Internal Revenue Code of 1997 by omitting PAGCOR from the exemption. The legislative intent, as shown by the discussions in the Bicameral Conference Meeting, is to require PAGCOR to pay corporate income tax; hence, the omission or removal of PAGCOR from exemption from the payment of corporate income tax. 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*. Thus, the express mention of the GOCCs exempted from payment of corporate income tax excludes all others. Not being

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excepted, petitioner PAGCOR must be regarded as coming within the purview of the general rule that GOCCs shall pay corporate income tax, expressed in the maxim: *exceptio firmat regulam in casibus non exceptis*.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; NOT VIOLATED IN CASE AT BAR.— PAGCOR cannot find support in the equal protection clause of the Constitution, as the legislative records of the Bicameral Conference Meeting dated October 27, 1997, of the Committee on Ways and Means, show that PAGCOR's exemption from payment of corporate income tax, as provided in Section 27 (c) of R.A. No. 8424, or the National Internal Revenue Code of 1997, was not made pursuant to a valid classification based on substantial distinctions and the other requirements of a reasonable classification by legislative bodies, so that the law may operate only on some, and not all, without violating the equal protection clause. The legislative records show that the basis of the grant of exemption to PAGCOR from corporate income tax was PAGCOR's own request to be exempted.

4. ID.; ID.; ID.; NON-IMPAIRMENT CLAUSE; LIMITED IN APPLICATION TO LAWS THAT DEROGATE FROM PRIOR ACTS OR CONTRACTS BY ENLARGING, ABRIDGING OR IN ANY MANNER CHANGING THE INTENTION OF THE PARTIES.— The non-impairment clause is contained in Section 10, Article III of the Constitution, which provides that no law impairing the obligation of contracts shall be passed. The non-impairment clause is limited in application to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties. There is impairment if a subsequent law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.

5. ID.; ID.; ID.; ID.; A FRANCHISE PARTAKES THE NATURE OF A GRANT, WHICH IS BEYOND THE PURVIEW OF THE NON-IMPAIRMENT CLAUSE OF THE CONSTITUTION.— As regards franchises, Section 11, Article XII of the Constitution provides that **no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress** when the common good so requires. In ***Manila Electric Company v. Province of Laguna***, the Court held

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that **a franchise partakes the nature of a grant, which is beyond the purview of the non-impairment clause of the Constitution**.

6. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— In this case, PAGCOR was granted a franchise to operate and maintain gambling casinos, clubs and other recreation or amusement places, sports, gaming pools, *i.e.*, basketball, football, lotteries, *etc.*, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines. Under Section 11, Article XII of the Constitution, PAGCOR's franchise is subject to amendment, alteration or repeal by Congress such as the amendment under Section 1 of R.A. No. 9377. Hence, the provision in Section 1 of R.A. No. 9337, amending Section 27 (c) of R.A. No. 8424 by withdrawing the exemption of PAGCOR from corporate income tax, which may affect any benefits to PAGCOR's transactions with private parties, is not violative of the non-impairment clause of the Constitution.

7. TAXATION; VALUE-ADDED TAX (VAT); THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION IS EXEMPT FROM THE PAYMENT OF VAT.— Anent the validity of RR No. 16-2005, the Court holds that the provision subjecting PAGCOR to 10% VAT is invalid for being contrary to R.A. No. 9337. Nowhere in R.A. No. 9337 is it provided that petitioner can be subjected to VAT. R.A. No. 9337 is clear only as to the removal of petitioner's exemption from the payment of corporate income tax x x x. As pointed out by the OSG, R.A. No. 9337 itself exempts petitioner from VAT pursuant to Section 7 (k) thereof x x x. Petitioner is exempt from the payment of VAT, because PAGCOR's charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes. Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337, which retained Section 108 (B) (3) of R.A. No. 8424 x x x. As pointed out by petitioner, although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108 (B) (3) that subjects to zero percent rate services performed by VAT-registered persons to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to 0% rate. Petitioner's exemption from VAT under Section 108 (B) (3) of R.A. No. 8424 has been thoroughly and extensively discussed in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation.* x x x Although the basis of the exemption of PAGCOR

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and Acesite from VAT in the case of *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation* was Section 102 (b) of the 1977 Tax Code, as amended, which section was retained as Section 108 (B) (3) in R.A. No. 8424, it is still applicable to this case, since the provision relied upon has been retained in R.A. No. 9337.

8. STATUTORY CONSTRUCTION; STATUTES; IN CASE OF DISCREPANCY BETWEEN THE BASIC LAW AND A RULE OR REGULATION ISSUED TO IMPLEMENT SAID LAW, THE BASIC LAW PREVAILS.— It is settled rule 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. RR No. 16-2005, therefore, cannot go beyond the provisions of R.A. No. 9337. Since PAGCOR is exempt from VAT under R.A. No. 9337, the BIR exceeded its authority in subjecting PAGCOR to 10% VAT under RR No. 16-2005; hence, the said regulatory provision is hereby nullified.

APPEARANCES OF COUNSEL

Bautista Consolacion, Gloria Salvosa, Apigo Sevilla, Noblejas Siosana, Sagsagat Bagasbas & Papica for petitioner.
BIR Litigation Division for respondents.

D E C I S I O N

PERALTA, *J.*:

For resolution of this Court is the Petition for *Certiorari* and Prohibition[1] with prayer for the issuance of a Temporary Restraining Order and/or Preliminary Injunction, dated April 17, 2006, of petitioner Philippine Amusement and Gaming Corporation (PAGCOR), seeking the declaration of nullity of Section 1 of Republic Act (R.A.) No. 9337 insofar as it amends Section 27 (c) of the National Internal Revenue Code of 1997, by excluding petitioner from exemption from corporate income tax for being

[1] Under Rule 65 of the Rules of Court.

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repugnant to Sections 1 and 10 of Article III of the Constitution. Petitioner further seeks to prohibit the implementation of Bureau of Internal Revenue (BIR) Revenue Regulations No. 16-2005 for being contrary to law.

The undisputed facts follow.

PAGCOR was created pursuant to Presidential Decree (P.D.) No. 1067-A[2] on January 1, 1977. Simultaneous to its creation, P.D. No. 1067-B[3] (supplementing P.D. No. 1067-A) was issued exempting PAGCOR from the payment of any type of tax, except a franchise tax of five percent (5%) of the gross revenue.[4] Thereafter, on June 2, 1978, P.D. No. 1399 was issued expanding the scope of PAGCOR's exemption.[5]

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[2] CREATING THE PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[3] GRANTING THE PAGCOR A FRANCHISE TO ESTABLISH, OPERATE AND MAINTAIN GAMBLING CASINOS ON LAND OR WATER WITHIN THE TERRITORIAL JURISDICTION OF THE REPUBLIC OF THE PHILIPPINES.

[4] Section 4 of P.D. No. 1067-B, provides:

Section 4. *Exemptions.* —

(1) *Duties, taxes and other imposts on importations.* - All importations of equipment, vehicles, boats, ships, barges, aircraft and other gambling paraphernalia or facilities for the sale and exclusive use of the casinos, clubs and other recreation or amusement places to be established under and by virtue of this Franchise shall be exempt from the payment of duties, taxes and other imports.

(2) *Income and other taxes.* - **No income or any other form shall be assessed and collected under this Franchise from the franchise holder; nor shall any form of tax or charge attach in any way to the earnings of the franchise holder, EXCEPT a Franchise Tax of five percent (5%) of the gross revenue or earnings derived by the franchise holder 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 taxes of any kind, nature or description, levied, established, or collected by any municipal, provincial or National authority.** (Emphasis supplied.)

[5] Section 3, P.D. No. 1399, in part, reads:

Section 3. Section 4 of Presidential Decree No. 1067-B is hereby amended to read as follows:

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To consolidate the laws pertaining to the franchise and powers of PAGCOR, P.D. No. 1869[6] was issued. Section 13 thereof reads as follows:

Sec. 13. *Exemptions.* — x x x

(1) Customs Duties, taxes and other imposts on importations. - All importations of equipment, vehicles, automobiles, boats, ships, barges, aircraft and such other gambling paraphernalia, including accessories or related facilities, for the sole and exclusive use of the casinos, the proper and efficient management and administration thereof and such other clubs, recreation or amusement places to be established under and by virtue of this Franchise shall be exempt

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Section 4. *Exemptions*. — x x x

(1) Duties, taxes and other imposts on importation. – 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, shall be assessed and collected under this Franchise from the Franchise Holder; nor shall any form of tax or charge attach in any way to the earnings of the Franchise Holder, except a Franchise Tax of five percent (5 %) of the gross revenue or earnings derived by the Franchise Holder form its operation under this Franchise. Such tax shall be due and payable to the National Government and shall be in lieu of all taxes, levies, fees or assessments of any kind, nature or description, levied, established, or collected by any municipal, provincial or national authority.

(b) Others: **The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation/s, association/s, agency/ies, or individual/s with whom the Franchise has any contractual relationship in connection with the operations of the casino/s authorized to be conducted under the franchise and to those receiving compensation or other remuneration from the Franchise Holder as a result of essential facilities furnished and/or technical services rendered to the Franchise Holder.** (Emphasis supplied.)

[6] 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).

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from the payment of duties, taxes and other imposts, including all kinds of fees, levies, or charges of any kind or nature.

Vessels and/or accessory ferry boats imported or to be imported by any corporation having existing contractual arrangements with the Corporation, for the sole and exclusive use of the casino or to be used to service the operations and requirements of the casino, shall likewise be totally exempt from the payment of all customs duties, taxes and other imposts, including all kinds of fees, levies, assessments or charges of any kind or nature, whether National or Local.

(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 percent (5%)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.

(b) Others: The exemption herein granted for earnings derived from the operations conducted under the franchise, specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

The fee or remuneration of foreign entertainers contracted by the Corporation or operator in pursuance of this provision shall be free of any tax.

(3) *Dividend Income*. — Notwithstanding any provision of law to the contrary, in the event the Corporation should declare a cash dividend income corresponding to the participation of the private

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sector shall, as an incentive to the beneficiaries, be subject only to a final flat income rate of ten percent (10%) of the regular income tax rates. The dividend income shall not in such case be considered as part of the beneficiaries' taxable income; provided, however, that such dividend income shall be totally exempted from income or other form of taxes if invested within six (6) months from the date the dividend income is received in the following:

(a) operation of the casino(s) or investments in any affiliate activity that will ultimately redound to the benefit of the Corporation; or any other corporation with whom the Corporation has any existing arrangements in connection with or related to the operations of the casino(s);

(b) Government bonds, securities, treasury notes, or government debentures; or

(c) BOI-registered or export-oriented corporation(s).[7]

PAGCOR's tax exemption was removed in June 1984 through P.D. No. 1931, but it was later restored by Letter of Instruction No. 1430, which was issued in September 1984.

On January 1, 1998, R.A. No. 8424,[8] otherwise known as the *National Internal Revenue Code of 1997*, took effect. Section 27 (c) of R.A. No. 8424 provides that government-owned and controlled corporations (GOCCs) shall pay corporate income tax, except petitioner PAGCOR, the Government Service and Insurance Corporation, the Social Security System, the Philippine Health Insurance Corporation, and the Philippine Charity Sweepstakes Office, thus:

(c) *Government-owned or Controlled Corporations, Agencies or Instrumentalities*. – The provisions of existing special general laws to the contrary notwithstanding, all corporations, agencies or instrumentalities owned and controlled by the Government, **except the Government Service and Insurance Corporation (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation**

[7] Emphasis supplied.

[8] AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.

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(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.[9]

With the enactment of R.A. No. 9337[10] on May 24, 2005, certain sections of the National Internal Revenue Code of 1997 were amended. The particular amendment that is at issue in this case is Section 1 of R.A. No. 9337, which amended Section 27 (c) of the National Internal Revenue Code of 1997 by excluding PAGCOR from the enumeration of GOCCs that are exempt from payment of corporate income tax, thus:

(c) *Government-owned or Controlled Corporations, Agencies or Instrumentalities.* – The provisions of existing special general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned and controlled by the Government, **except the Government Service and Insurance Corporation (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 similar business, industry, or activity.

Different groups came to this Court via petitions for *certiorari* and prohibition[11] assailing the validity and constitutionality of R.A. No. 9337, in particular:

1) Section 4, which imposes a 10% Value Added Tax (VAT) on sale of goods and properties; Section 5, which imposes a 10% VAT on importation of goods; and Section 6, which imposes a 10% VAT on sale of services and use or lease of properties, all contain a uniform proviso authorizing the President, upon

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[9] Emphasis supplied.

[10] 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.

[11] G.R. Nos. 168056, 168207, 168461, 168463 and 168730.

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the recommendation of the Secretary of Finance, to raise the VAT rate to 12%. The said provisions were alleged to be violative of Section 28 (2), Article VI of the Constitution, which section vests in Congress the exclusive authority to fix the rate of taxes, and of Section 1, Article III of the Constitution on due process, as well as of Section 26 (2), Article VI of the Constitution, which section provides for the "no amendment rule" upon the last reading of a bill;

2) Sections 8 and 12 were alleged to be violative of Section 1, Article III of the Constitution, or the guarantee of equal protection of the laws, and Section 28 (1), Article VI of the Constitution; and

3) other technical aspects of the passage of the law, questioning the manner it was passed.

On September 1, 2005, the Court dismissed all the petitions and upheld the constitutionality of R.A. No. 9337.[12]

On the same date, respondent BIR issued Revenue Regulations (RR) No. 16-2005,[13] specifically identifying PAGCOR as one of the franchisees subject to 10% VAT imposed under Section 108 of the National Internal Revenue Code of 1997, as amended by R.A. No. 9337. The said revenue regulation, in part, reads:

Sec. 4. 108-3. *Definitions and Specific Rules on Selected Services.* —

x x x x x x x x x

(h) x x x

Gross Receipts of all other franchisees, other than those covered by Sec. 119 of the Tax Code, regardless of how their franchisees

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[12] See *Abakada Guro Party List v. Ermita*, 506 Phil. 1 (2005).

[13] Revenue Regulations No. 16-2005 states: "Pursuant to the provisions of Secs. 244 and 245 of the National Internal Revenue Code of 1997, as last amended by Republic Act No. 9337 (Tax Code), in relation to Sec. 23 of the said Republic Act, these Regulations are hereby promulgated to implement Title IV of the Tax Code, as well as other provisions pertaining to Value-Added Tax (VAT). These Regulations supersedes Revenue Regulations No. 14-2005 dated June 22, 2005."

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may have been granted, shall be subject to the 10% VAT imposed under Sec.108 of the Tax Code. This includes, among others, the Philippine Amusement and Gaming Corporation (PAGCOR), and its licensees or franchisees.

Hence, the present petition for *certiorari*.

PAGCOR raises the following issues:

I

WHETHER OR NOT RA 9337, SECTION 1 (C) IS NULL AND VOID *AB INITIO* FOR BEING REPUGNANT TO THE EQUAL PROTECTION [CLAUSE] EMBODIED IN SECTION 1, ARTICLE III OF THE 1987 CONSTITUTION.

II

WHETHER OR NOT RA 9337, SECTION 1 (C) IS NULL AND VOID *AB INITIO* FOR BEING REPUGNANT TO THE NON-IMPAIRMENT [CLAUSE] EMBODIED IN SECTION 10, ARTICLE III OF THE 1987 CONSTITUTION.

III

WHETHER OR NOT RR 16-2005, SECTION 4.108-3, PARAGRAPH (H) IS NULL AND VOID *AB INITIO* FOR BEING BEYOND THE SCOPE OF THE BASIC LAW, RA 8424, SECTION 108, INSOFAR AS THE SAID REGULATION IMPOSED VAT ON THE SERVICES OF THE PETITIONER AS WELL AS PETITIONER'S LICENSEES OR FRANCHISEES WHEN THE BASIC LAW, AS INTERPRETED BY APPLICABLE JURISPRUDENCE, DOES NOT IMPOSE VAT ON PETITIONER OR ON PETITIONER'S LICENSEES OR FRANCHISEES.[14]

The BIR, in its Comment[15] dated December 29, 2006, counters:

I

SECTION 1 OF R.A. NO. 9337 AND SECTION 13 (2) OF P.D. 1869 ARE BOTH VALID AND CONSTITUTIONAL PROVISIONS OF LAWS THAT SHOULD BE HARMONIOUSLY CONSTRUED

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[14] *Rollo*, pp. 18-19; 318-319.

[15] *Id.* at 230-260.

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TOGETHER SO AS TO GIVE EFFECT TO ALL OF THEIR PROVISIONS WHENEVER POSSIBLE.

II

SECTION 1 OF R.A. NO. 9337 IS NOT VIOLATIVE OF SECTION 1 AND SECTION 10, ARTICLE III OF THE 1987 CONSTITUTION.

III

BIR REVENUE REGULATIONS ARE PRESUMED VALID AND CONSTITUTIONAL UNTIL STRICKEN DOWN BY LAWFUL AUTHORITIES.

The Office of the Solicitor General (OSG), by way of Manifestation In *Lieu* of Comment,[16] concurred with the arguments of the petitioner. It added that although the State is free to select the subjects of taxation and that the inequity resulting from singling out a particular class for taxation or exemption is not an infringement of the constitutional limitation, a tax law must operate with the same force and effect to all persons, firms and corporations placed in a similar situation. Furthermore, according to the OSG, public respondent BIR exceeded its statutory authority when it enacted RR No. 16-2005, because the latter's provisions are contrary to the mandates of P.D. No. 1869 in relation to R.A. No. 9337.

The main issue is whether or not PAGCOR is still exempt from corporate income tax and VAT with the enactment of R.A. No. 9337.

After a careful study of the positions presented by the parties, this Court finds the petition partly meritorious.

Under Section 1 of R.A. No. 9337, amending Section 27 (c) of the National Internal Revenue Code of 1977, petitioner is no longer exempt from corporate income tax as it has been effectively omitted from the list of GOCCs that are exempt from it. Petitioner argues that such omission is unconstitutional,

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[16] *Id.* at 190-222.

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as it is violative of its right to equal protection of the laws under Section 1, Article III of the Constitution:

> Sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

In *City of Manila v. Laguio, Jr.*,[17] this Court expounded the meaning and scope of equal protection, thus:

> Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others. The guarantee means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other classes in like circumstances. The "equal protection of the laws is a pledge of the protection of equal laws." It limits governmental discrimination. The equal protection clause extends to artificial persons but only insofar as their property is concerned.
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> x x x x x x x x x
>
> Legislative bodies are allowed to classify the subjects of legislation. If the classification is reasonable, the law may operate only on some and not all of the people without violating the equal protection clause. The classification must, as an indispensable requisite, not be arbitrary. To be valid, it must conform to the following requirements:
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> 1) It must be based on substantial distinctions.
> 2) It must be germane to the purposes of the law.
> 3) It must not be limited to existing conditions only.
> 4) It must apply equally to all members of the class.[18]

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[17] 495 Phil. 289 (2005).

[18] *Id.* at 326, citing *Ichong v. Hernandez*, 101 Phil. 1155 (1957), 16B Am Jur. 2d § 779 299, citing *State of Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 59 S. Ct. 232, 83 L. Ed. 208 (1938), reh'g denied, 305 U.S. 676, 59 S. Ct. 356, 83 L. Ed. 437 (1939) and mandate conformed to, 344 Mo. 1238, 131 S.W. 2d 217 (1939), *Romer v. Evans*, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855, 109 Ed. Law Rep. 539, 70 Fair Empl. Prac. Cas. (BNA) 1180, 68 Empl. Prac. Dec. (CCH) 44013 (1996), *Walker v. Board of Supervisors of Monroe County*, 224 Miss. 801, 81 So. 2d 225

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It is not contested that before the enactment of R.A. No. 9337, petitioner was one of the five GOCCs exempted from payment of corporate income tax as shown in R.A. No. 8424, Section 27 (c) of which, reads:

(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 and controlled by the Government, except the Government Service and Insurance Corporation (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.[19]

A perusal of the legislative records of the Bicameral Conference Meeting of the Committee on Ways and Means dated October 27, 1997 would show that **the exemption of PAGCOR from the payment of corporate income tax was due to the acquiescence of the Committee on Ways and Means to the request of PAGCOR that it be exempt from such tax**.[20] The records of the Bicameral Conference Meeting reveal:

HON. R. DIAZ. The other thing, sir, is we — I noticed we imposed a tax on lotto winnings.

CHAIRMAN ENRILE. *Wala na, tinanggal na namin yon.*

HON. R. DIAZ. *Tinanggal na ba natin yon*?

CHAIRMAN ENRILE. *Oo.*

(1955), cert. denied, 350 U.S. 887, 76 S. Ct. 142, 100 L. Ed. 782 (1955); *Preisler v. Calcaterra*, 362 Mo. 662, 243 S.W. 2d 62 (1951); *Smith, Bell & Co. v. Natividad*, 40 Phil. 136, 145 (1919): *Nuñez v. Sandiganbayan*, 197 Phil. 407 (1982); Cruz, Isagani A., *Constitutional Law* 125 (1998) and *People v. Cayat*, 68 Phil. 12 (1939).

[19] Emphasis supplied.

[20] Emphasis supplied.

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HON. R. DIAZ. Because I was wondering whether we covered the tax on — Whether on a universal basis, we included a tax on cockfighting winnings.

CHAIRMAN ENRILE. No, we removed the —

HON. R. DIAZ. I . . . (inaudible) *natin yong lotto*?

CHAIRMAN ENRILE. ***Pati* PAGCOR *tinanggal* upon request.**

CHAIRMAN JAVIER. Yeah, Philippine Insurance Commission.

CHAIRMAN ENRILE. Philippine Insurance — Health, health ba. *Yon ang* request *ng* Chairman, I will accept. (laughter) *Pag-Pag-ibig yon, maliliit na sa tao yon.*

HON. ROXAS. Mr. Chairman, I wonder if in the revenue gainers if we factored in an amount that would reflect the VAT and other sales taxes—

CHAIRMAN ENRILE. No, we're talking of this measure only. We will not — (discontinued)

HON. ROXAS. No, no, no, no, from the — arising from the exemption. Assuming that when we release the money into the hands of the public, they will not use that to — for wallpaper. They will spend that eh, Mr. Chairman. So when they spend that—

CHAIRMAN ENRILE. There's a VAT.

HON. ROXAS. There will be a VAT and there will be other sales taxes no. Is there a quantification? Is there an approximation?

CHAIRMAN JAVIER. Not anything.

HON. ROXAS. So, in effect, we have sterilized that entire seven billion. In effect, it is not circulating in the economy which is unrealistic.

CHAIRMAN ENRILE. It does, it does, because this is taken and spent by government, somebody receives it in the form of wages and supplies and other services and other goods. They are not being taken from the public and stored in a vault.

CHAIRMAN JAVIER. That 7.7 loss because of tax exemption. That will be extra income for the taxpayers.

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HON. ROXAS. Precisely, so they will be spending it.[21]

The discussion above bears out that under R.A. No. 8424, the exemption of PAGCOR from paying corporate income tax was not based on a classification showing substantial distinctions which make for real differences, but to reiterate, the exemption was granted upon the request of PAGCOR that it be exempt from the payment of corporate income tax.

With the subsequent enactment of R.A. No. 9337, amending R.A. No. 8424, PAGCOR has been excluded from the enumeration of GOCCs that are exempt from paying corporate income tax. The records of the Bicameral Conference Meeting dated April 18, 2005, of the Committee on the Disagreeing Provisions of Senate Bill No. 1950 and House Bill No. 3555, show that it is the legislative intent that PAGCOR be subject to the payment of corporate income tax, thus:

THE CHAIRMAN (SEN. RECTO). Yes, Osmeña, the proponent of the amendment.

SEN. OSMEÑA. Yeah. Mr. Chairman, one of the reasons why we're even considering this VAT bill is we want to show the world who our creditors, that we are increasing official revenues that go to the national budget. Unfortunately today, Pagcor is unofficial.

Now, in 2003, I took a quick look this morning, Pagcor had a net income of 9.7 billion after paying some small taxes that they are subjected to. Of the 9.7 billion, they claim they remitted to national government seven billion. *Pagkatapos*, there are other specific remittances like to the Philippine Sports Commission, *etc*., as mandated by various laws, and then about 400 million to the President's Social Fund. But all in all, their net profit today should be about 12 billion. That's why I am questioning this two billion. **Because while essentially they claim that the money goes to government, and I will accept that just for the sake of argument. It does not pass through the appropriation process. And I think that at least if we can capture 35 percent or 32 percent through the budgetary process, first, it is reflected in our official income of government which is applied to the national budget, and secondly, it goes through what is**

[21] Emphasis supplied.

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constitutionally mandated as Congress appropriating and defining where the money is spent and not through a board of directors that has absolutely no accountability.

REP. PUENTEBELLA. Well, with all due respect, Mr. Chairman, follow up *lang*.

There is wisdom in the comments of my good friend from Cebu, Senator Osmeña.

SEN. OSMEÑA. And Negros.

REP. PUENTEBELLA. And Negros at the same time *ay Kasimanwa*. But I would not want to put my friends from the Department of Finance in a difficult position, but may we know your comments on this knowing that as Senator Osmeña just mentioned, he said, "I accept that that a lot of it is going to spending for basic services," you know, going to most, I think, supposedly a lot or most of it should go to government spending, social services and the like. What is your comment on this? This is going to affect a lot of services on the government side.

THE CHAIRMAN (REP. LAPUS). Mr. Chair, Mr. Chair.

SEN. OSMEÑA. It goes from pocket to the other, Monico.

REP. PUENTEBELLA. I know that. But I wanted to ask them, Mr. Senator, because you may have your own pre-judgment on this and I don't blame you. I don't blame you. And I know you have your own research. But will this not affect a lot, the disbursements on social services and other?

REP. LOCSIN. Mr. Chairman. Mr. Chairman, if I can add to that question also. Wouldn't it be easier for you to explain to, say, foreign creditors, how do you explain to them that if there is a fiscal gap some of our richest corporations has [been] spared [from] taxation by the government which is one rich source of revenues. Now, why do you save, why do you spare certain government corporations on that, like Pagcor? So, would it be easier for you to make an argument if everything was exposed to taxation?

REP. TEVES. Mr. Chair, please.

THE CHAIRMAN (REP. LAPUS). Can we ask the DOF to respond to those before we call Congressman Teves?

MR. PURISIMA. Thank you, Mr. Chair.

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Yes, from definitely improving the collection, it will help us because it will then enter as an official revenue although when dividends declare it also goes in as other income. (sic)

x x x x x x x x x

REP. TEVES. Mr. Chairman.

x x x x x x x x x

THE CHAIRMAN (REP. LAPUS). Congressman Teves.

REP. TEVES. **Yeah. Pagcor is controlled under Section 27, that is on income tax. Now, we are talking here on value-added tax. Do you mean to say we are going to amend it from income tax to value-added tax, as far as Pagcor is concerned?**

THE CHAIRMAN (SEN. RECTO). **No. We are just amending that section with regard to the exemption from income tax of Pagcor.**

x x x x x x x x x

REP. NOGRALES. Mr. Chairman, Mr. Chairman. Mr. Chairman.

THE CHAIRMAN (REP. LAPUS). Congressman Nograles.

REP. NOGRALES. Just a point of inquiry from the Chair. What exactly are the functions of Pagcor that are VATable? What will we VAT in Pagcor?

THE CHAIRMAN (REP. LAPUS). This is on own income tax. This is Pagcor income tax.

REP. NOGRALES. No, that's why. *Anong* i-va-Vat *natin sa kanya.* Sale of what?

x x x x x x x x x

REP. VILLAFUERTE. Mr. Chairman, my question is, what are we VATing Pagcor with, is it the . . .

REP. NOGRALES. Mr. Chairman, this is a secret agreement or the way they craft their contract, which basis?

THE CHAIRMAN (SEN. RECTO). **Congressman Nograles, the Senate version does not discuss a VAT on Pagcor but it just takes away their exemption from non-payment of income tax.**[22]

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[22] Emphasis supplied.

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Taxation is the rule and exemption is the exception.[23] The burden of proof rests upon the party claiming exemption to prove that it is, in fact, covered by the exemption so claimed.[24] As a rule, tax exemptions are construed strongly against the claimant.[25] Exemptions must be shown to exist clearly and categorically, and supported by clear legal provision.[26]

In this case, PAGCOR failed to prove that it is still exempt from the payment of corporate income tax, considering that Section 1 of R.A. No. 9337 amended Section 27 (c) of the National Internal Revenue Code of 1997 by omitting PAGCOR from the exemption. The legislative intent, as shown by the discussions in the Bicameral Conference Meeting, is to require PAGCOR to pay corporate income tax; hence, the omission or removal of PAGCOR from exemption from the payment of corporate income tax. 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*.[27] Thus, the express mention of the GOCCs exempted from payment of corporate income tax excludes all others. Not being excepted, petitioner PAGCOR must be regarded as coming within the purview of the general rule that GOCCs shall pay corporate income tax, expressed in the maxim: *exceptio firmat regulam in casibus non exceptis*.[28]

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[23] *National Power Corporation v. Province of Isabela*, G.R. No. 165827, June 16, 2006, 491 SCRA 169, 180.

[24] *Id*.

[25] *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 259 (2003).

[26] *Id*.

[27] *Id.*; Ruben E. Agpalo, *Statutory Construction*, Fifth Edition, © 2003, p. 222.

[28] *C.N. Hodges v. Municipal Board, Iloilo City, et al.*,125 Phil. 442, 449 (1967); Ruben E. Agpalo, *Statutory Construction*, Fifth Edition, © 2003, pp. 222-223.

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PAGCOR cannot find support in the equal protection clause of the Constitution, as the legislative records of the Bicameral Conference Meeting dated October 27, 1997, of the Committee on Ways and Means, show that PAGCOR's exemption from payment of corporate income tax, as provided in Section 27 (c) of R.A. No. 8424, or the National Internal Revenue Code of 1997, was not made pursuant to a valid classification based on substantial distinctions and the other requirements of a reasonable classification by legislative bodies, so that the law may operate only on some, and not all, without violating the equal protection clause. The legislative records show that the basis of the grant of exemption to PAGCOR from corporate income tax was PAGCOR's own request to be exempted.

Petitioner further contends that Section 1 (c) of R.A. No. 9337 is null and void *ab initio* for violating the non-impairment clause of the Constitution. Petitioner avers that laws form part of, and is read into, the contract even without the parties expressly saying so. Petitioner states that the private parties/ investors transacting with it considered the tax exemptions, which inure to their benefit, as the main consideration and inducement for their decision to transact/invest with it. Petitioner argues that the withdrawal of its exemption from corporate income tax by R.A. No. 9337 has the effect of changing the main consideration and inducement for the transactions of private parties with it; thus, the amendatory provision is violative of the non-impairment clause of the Constitution.

Petitioner's contention lacks merit.

The non-impairment clause is contained in Section 10, Article III of the Constitution, which provides that no law impairing the obligation of contracts shall be passed. The non-impairment clause is limited in application to laws that derogate from prior acts or contracts by enlarging, abridging or in any manner changing the intention of the parties.[29] There is impairment if a subsequent

[29] *BANAT Party-list v. COMELEC*, G.R. No. 177508, August 7, 2009, 595 SCRA 477, 498, citing *Serrano v. Gallant Maritime Services, Inc.*, 582 SCRA 254 (2009).

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law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws remedies for the enforcement of the rights of the parties.[30]

As regards franchises, Section 11, Article XII of the Constitution[31] provides that **no franchise or right shall be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress** when the common good so requires.[32]

In ***Manila Electric Company v. Province of Laguna***,[33] the Court held that **a franchise partakes the nature of a grant, which is beyond the purview of the non-impairment clause of the Constitution**.[34] The pertinent portion of the case states:

> While the Court has, not too infrequently, referred to tax exemptions contained in special franchises as being in the nature of contracts and a part of the inducement for carrying on the franchise, these exemptions, nevertheless, are far from being strictly contractual in nature. *Contractual tax exemptions, in the real sense of the term*

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[30] *Id.*, citing *Clemons v. Nolting*, 42 Phil. 702 (1922).

[31] The Constitution, Art. XII, Sec. 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive in character or for a longer period than fifty years. **Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires**. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines. (Emphasis supplied.)

[32] Emphasis supplied.

[33] 366 Phil. 428 (1999).

[34] *Id.* at 438. (Emphasis supplied.)

and where the non-impairment clause of the Constitution can rightly be invoked, are those agreed to by the taxing authority in contracts, such as those contained in government bonds or debentures, lawfully entered into by them under enabling laws in which the government, acting in its private capacity, sheds its cloak of authority and waives its governmental immunity. Truly, tax exemptions of this kind may not be revoked without impairing the obligations of contracts. These contractual tax exemptions, however, are not to be confused with tax exemptions granted under franchises. **A franchise partakes the nature of a grant which is beyond the purview of the non-impairment clause of the Constitution. Indeed, Article XII, Section 11, of the 1987 Constitution, like its precursor provisions in the 1935 and the 1973 Constitutions, is explicit that no franchise for the operation of a public utility shall be granted except under the condition that such privilege shall be subject to amendment, alteration or repeal by Congress as and when the common good so requires**.[35]

In this case, PAGCOR was granted a franchise to operate and maintain gambling casinos, clubs and other recreation or amusement places, sports, gaming pools, *i.e.*, basketball, football, lotteries, *etc.*, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.[36] Under Section 11, Article XII of the Constitution, PAGCOR's franchise is subject to amendment, alteration or repeal by Congress such as the amendment under Section 1 of R.A. No. 9377. Hence, the provision in Section 1 of R.A. No. 9337, amending Section 27 (c) of R.A. No. 8424 by withdrawing the exemption of PAGCOR from corporate income tax, which may affect any benefits to PAGCOR's transactions with private parties, is not violative of the non-impairment clause of the Constitution.

Anent the validity of RR No. 16-2005, the Court holds that the provision subjecting PAGCOR to 10% VAT is invalid for being contrary to R.A. No. 9337. Nowhere in R.A. No. 9337 is it provided that petitioner can be subjected to VAT. R.A. No. 9337 is clear only as to the removal of petitioner's exemption

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[35] *Id.* at 438-439. (Emphasis supplied.)

[36] *See* P.D. No. 1869, Sec. 10.

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from the payment of corporate income tax, which was already addressed above by this Court.

As pointed out by the OSG, R.A. No. 9337 itself exempts petitioner from VAT pursuant to Section 7 (k) thereof, which reads:

> Sec. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:
>
> Section 109. *Exempt Transactions*. – (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> x x x x x x x x x
>
> (k) **Transactions which are exempt** under international agreements to which the Philippines is a signatory or **under special laws,** except Presidential Decree No. 529.[37]

Petitioner is exempt from the payment of VAT, because PAGCOR's charter, P.D. No. 1869, is a special law that grants petitioner exemption from taxes.

Moreover, the exemption of PAGCOR from VAT is supported by Section 6 of R.A. No. 9337, which retained Section 108 (B) (3) of R.A. No. 8424, thus:

> [R.A. No. 9337], SEC. 6. Section 108 of the same Code (R.A. No. 8424), as amended, is hereby further amended to read as follows:
>
> SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties*. —
>
> (A) *Rate and Base of Tax*. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties: x x x
>
> x x x x x x x x x

[37] Emphasis supplied.

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> **(B)** ***Transactions Subject to Zero Percent (0%) Rate***. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;
>
> x x x x x x x x x
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively **subjects the supply of such services to zero percent (0%) rate**;
>
> x x x x x x x x x[38]

As pointed out by petitioner, although R.A. No. 9337 introduced amendments to Section 108 of R.A. No. 8424 by imposing VAT on other services not previously covered, it did not amend the portion of Section 108 (B) (3) that subjects to zero percent rate services performed by VAT-registered persons to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to 0% rate.

Petitioner's exemption from VAT under Section 108 (B) (3) of R.A. No. 8424 has been thoroughly and extensively discussed in *Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation.*[39] Acesite was the owner and operator of the Holiday Inn Manila Pavilion Hotel. It leased a portion of the hotel's premises to PAGCOR. It incurred VAT amounting to ₱30,152,892.02 from its rental income and sale of food and beverages to PAGCOR from January 1996 to April 1997. Acesite tried to shift the said taxes to PAGCOR by incorporating it in the amount assessed to PAGCOR. However, PAGCOR refused to pay the taxes because of its tax-exempt status. PAGCOR paid only the amount due to Acesite minus VAT in the sum of ₱30,152,892.02. Acesite paid VAT in the amount of ₱30,152,892.02 to the Commissioner of

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[38] Emphasis supplied.

[39] G.R. No. 147295, February 16, 2007, 516 SCRA 93, 101, citing *Commissioner of Internal Revenue v. John Gotamco & Sons, Inc.*, 148 SCRA 36 (1987).

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Internal Revenue, fearing the legal consequences of its non-payment. In May 1998, Acesite sought the refund of the amount it paid as VAT on the ground that its transaction with PAGCOR was subject to zero rate as it was rendered to a tax-exempt entity. The Court ruled that PAGCOR and Acesite were both exempt from paying VAT, thus:

x x x x x x x x x

PAGCOR is exempt from payment of indirect taxes

It is undisputed that P.D. 1869, the charter creating PAGCOR, grants the latter an exemption from the payment of taxes. Section 13 of P.D. 1869 pertinently provides:

Sec. 13. *Exemptions*. —

xxx xxx xxx

(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.

(b) *Others*: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator.

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Petitioner contends that the above tax exemption refers only to PAGCOR's direct tax liability and not to indirect taxes, like the VAT.

We disagree.

A close scrutiny of the above provisos clearly gives PAGCOR a blanket exemption to taxes with no distinction on whether the taxes are direct or indirect. We are one with the CA ruling that PAGCOR is also exempt from indirect taxes, like VAT, as follows:

> Under the above provision [Section 13 (2) (b) of P.D. 1869], the term "Corporation" or operator refers to PAGCOR. Although the law does not specifically mention PAGCOR's exemption from indirect taxes, **PAGCOR is undoubtedly exempt from such taxes because the law exempts from taxes persons or entities contracting with PAGCOR in casino operations**. Although, differently worded, the provision clearly exempts PAGCOR from indirect taxes. **In fact, it goes one step further by granting tax exempt status to persons dealing with PAGCOR in casino operations**. The unmistakable conclusion is that PAGCOR is not liable for the ₱30,152,892.02 VAT and neither is Acesite as the latter is effectively subject to zero percent rate under Sec. 108 B (3), R.A. 8424. (Emphasis supplied.)

Indeed, by extending the exemption to entities or individuals dealing with PAGCOR, the legislature clearly granted exemption also from indirect taxes. It must be noted that the indirect tax of VAT, as in the instant case, can be shifted or passed to the buyer, transferee, or lessee of the goods, properties, or services subject to VAT. **Thus, by extending the tax exemption to entities or individuals dealing with PAGCOR in casino operations, it is exempting PAGCOR from being liable to indirect taxes.**

The manner of charging VAT does not make PAGCOR liable to said tax.

It is true that VAT can either be incorporated in the value of the goods, properties, or services sold or leased, in which case it is computed as 1/11 of such value, or charged as an additional 10% to the value. Verily, the seller or lessor has the option to follow either way in charging its clients and customer. In the instant case, Acesite followed the latter method, that is, charging an additional 10% of the gross sales and rentals. Be that as it may, the use of either method,

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and in particular, the first method, does not denigrate the fact that PAGCOR is exempt from an indirect tax, like VAT.

VAT exemption extends to Acesite

Thus, while it was proper for PAGCOR not to pay the 10% VAT charged by Acesite, the latter is not liable for the payment of it as it is exempt in this particular transaction by operation of law to pay the indirect tax. Such exemption falls within the former Section 102 (b) (3) of the 1977 Tax Code, as amended (**now Sec. 108 [b] [3] of R.A. 8424**), which provides:

> Section 102. *Value-added tax on sale of services*.- (a) Rate and base of tax - There shall be levied, assessed and collected, a value-added tax equivalent to 10% of gross receipts derived by any person engaged in the sale of services x x x; Provided, that the following services performed in the Philippines by VAT-registered persons shall be subject to 0%.
>
> x x x x x x x x x
>
> (3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero (0%) rate (emphasis supplied).

The rationale for the exemption from indirect taxes provided for in P.D. 1869 and the extension of such exemption to entities or individuals dealing with PAGCOR in casino operations are best elucidated from the 1987 case of *Commissioner of Internal Revenue* v. *John Gotamco* & *Sons, Inc.*, where the absolute tax exemption of the World Health Organization (WHO) upon an international agreement was upheld. We held in said case that the exemption of contractee WHO should be implemented to mean that the entity or person exempt is the contractor itself who constructed the building owned by contractee WHO, and such does not violate the rule that tax exemptions are personal because the manifest intention of the agreement is to exempt the contractor so that no contractor's tax may be shifted to the contractee WHO. **Thus, the proviso in P.D. 1869, extending the exemption to entities or individuals dealing with PAGCOR in casino operations, is clearly to proscribe any indirect tax, like VAT, that may be shifted to PAGCOR**.[40]

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[40] *Id.* at 98-101. (Emphasis supplied.)

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Although the basis of the exemption of PAGCOR and Acesite from VAT in the case of *The Commissioner of Internal Revenue v. Acesite (Philippines) Hotel Corporation* was Section 102 (b) of the 1977 Tax Code, as amended, which section was retained as Section 108 (B) (3) in R.A. No. 8424,[41] it is still applicable to this case, since the provision relied upon has been retained in R.A. No. 9337.[42]

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[41] R.A. No. 8424, SEC. 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties*. — x x x

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

The phrase "*sale or exchange of services"* means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by xxx services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; x x x

x x x x x x x x x

(B) ***Transactions Subject to Zero Percent (0%) Rate***.—The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;

x x x x x x x x x

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively **subjects the supply of such services to zero percent (0%) rate**;

x x x x x x x x x (Emphasis supplied.)

[42] Section 6 of R.A. No. 9337 states:

SEC. 6. Section 108 of the same Code, as amended, is hereby further amended to read as follows:

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

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

x x x x x x x x x

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It is settled rule 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.[43] RR No. 16-2005, therefore, cannot go beyond the provisions of R.A. No. 9337. Since PAGCOR is exempt from VAT under R.A. No. 9337, the BIR exceeded its authority in subjecting PAGCOR to 10% VAT under RR No. 16-2005; hence, the said regulatory provision is hereby nullified.

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.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Nachura and *Brion, JJ.,* on official leave.

(B) ***Transactions Subject to Zero percent (0%) Rate***.—The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;

x x x x x x x x x

(3) **Services rendered to persons or entities whose exemption under special laws** or international agreements to which the Philippines is a signatory effectively **subjects the supply of such services to zero percent (0%) rate**;

x x x x x x x x x (Emphasis supplied.)

[43] *Hijo Plantation, Inc. v. Central Bank,* 247 Phil. 154, 162 (1988), citing *People v. Lim,* 108 Phil. 1091 (1960).