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EN BANC

[G.R. No. 193007, July 19, 2011]

RENATO V. DIAZ AND AURORA MA. F. TIMBOL, PETITIONERS, VS. THE SECRETARY OF FINANCE AND THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENTS.

D E C I S I O N

ABAD, J.:

May toll fees collected by tollway operators be subjected to value- added tax?

The Facts and the Case

Petitioners Renato V. Diaz and Aurora Ma. F. Timbol (petitioners) filed this petition for declaratory relief [1] assailing the validity of the impending imposition of value-added tax (VAT) by the Bureau of Internal Revenue (BIR) on the collections of tollway operators.

Petitioners claim that, since the VAT would result in increased toll fees, they have an interest as regular users of tollways in stopping the BIR action. Additionally, Diaz claims that he sponsored the approval of Republic Act 7716 (the 1994 Expanded VAT Law or EVAT Law) and Republic Act 8424 (the 1997 National Internal Revenue Code or the NIRC) at the House of Representatives. Timbol, on the other hand, claims that she served as Assistant Secretary of the Department of Trade and Industry and consultant of the Toll Regulatory Board (TRB) in the past administration.

Petitioners allege that the BIR attempted during the administration of President Gloria Macapagal-Arroyo to impose VAT on toll fees. The imposition was deferred, however, in view of the consistent opposition of Diaz and other sectors to such move. But, upon President Benigno C. Aquino III's assumption of office in 2010, the BIR revived the idea and would impose the challenged tax on toll fees beginning August 16, 2010 unless judicially enjoined.

Petitioners hold the view that Congress did not, when it enacted the NIRC, intend to include toll fees within the meaning of "sale of services" that are subject to VAT; that a toll fee is a "user's tax," not a sale of services; that to impose VAT on toll fees would amount to a tax on public service; and that, since VAT was never factored into the formula for computing toll fees, its imposition would violate the non-impairment clause of the constitution.

On August 13, 2010 the Court issued a temporary restraining order (TRO), enjoining the implementation of the VAT. The Court required the government, represented by respondents Cesar V. Purisima, Secretary of the Department of Finance, and Kim S. Jacinto-Henares, Commissioner of Internal Revenue, to comment on the petition within 10 days from notice. [2] Later, the Court issued another resolution treating the petition as one for prohibition. [3]

On August 23, 2010 the Office of the Solicitor General filed the government's comment. [4] The government avers that the NIRC imposes VAT on all kinds of services of franchise grantees, including tollway operations, except where the law provides otherwise; that the Court should seek the meaning and intent of the law from the words used in the statute; and that the imposition of VAT on tollway operations has been the subject as early as 2003 of several BIR rulings and circulars. [5]

The government also argues that petitioners have no right to invoke the non-impairment of contracts clause since they clearly have no personal interest in existing toll operating agreements (TOAs) between the government and tollway operators. At any rate, the non-impairment clause cannot limit the State's sovereign taxing power which is generally read into contracts.

Finally, the government contends that the non-inclusion of VAT in the parametric formula for computing toll rates cannot exempt tollway operators from VAT. In any event, it cannot be claimed that the rights of tollway operators to a reasonable rate of return will be impaired by the VAT since this is imposed on top of the toll rate. Further, the imposition of VAT on toll fees would have very minimal effect on motorists using the tollways.

In their reply [6] to the government's comment, petitioners point out that tollway operators cannot be regarded as franchise grantees under the NIRC since they do not hold legislative franchises. Further, the BIR intends to collect the VAT by rounding off the toll rate and putting any excess collection in an escrow account. But this would be illegal since only the Congress can modify VAT rates and authorize its disbursement. Finally, BIR Revenue Memorandum Circular 63-2010 (BIR RMC 63-2010), which directs toll companies to record an accumulated input VAT of zero balance in their books as of August 16, 2010, contravenes Section 111 of the NIRC which grants entities that first become liable to VAT a transitional input tax credit of 2% on beginning inventory. For this reason, the VAT on toll fees cannot be implemented.

The Issues Presented

The case presents two procedural issues:

1. Whether or not the Court may treat the petition for declaratory relief as one for

prohibition; and

2. Whether or not petitioners Diaz and Timbol have legal standing to file the action.

The case also presents two substantive issues:

1. Whether or not the government is unlawfully expanding VAT coverage by including tollway operators and tollway operations in the terms "franchise grantees" and "sale of services" under Section 108 of the Code; and

2. Whether or not the imposition of VAT on tollway operators a) amounts to a tax on tax and not a tax on services; b) will impair the tollway operators' right to a reasonable return of investment under their TOAs; and c) is not administratively feasible and cannot be implemented.

The Court's Rulings

A. On the Procedural Issues:

On August 24, 2010 the Court issued a resolution, treating the petition as one for prohibition rather than one for declaratory relief, the characterization that petitioners Diaz and Timbol gave their action. The government has sought reconsideration of the Court's resolution, [7] however, arguing that petitioners' allegations clearly made out a case for declaratory relief, an action over which the Court has no original jurisdiction. The government adds, moreover, that the petition does not meet the requirements of Rule 65 for actions for prohibition since the BIR did not exercise judicial, quasi-judicial, or ministerial functions when it sought to impose VAT on toll fees. Besides, petitioners Diaz and Timbol has a plain, speedy, and adequate remedy in the ordinary course of law against the BIR action in the form of an appeal to the Secretary of Finance.

But there are precedents for treating a petition for declaratory relief as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good. [8] The Court has also held that a petition for prohibition is a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority. [9]

Here, the imposition of VAT on toll fees has far-reaching implications. Its imposition would impact, not only on the more than half a million motorists who use the tollways everyday, but more so on the government's effort to raise revenue for funding various projects and for reducing budgetary deficits.

To dismiss the petition and resolve the issues later, after the challenged VAT has been imposed, could cause more mischief both to the tax-paying public and the government. A belated declaration of nullity of the BIR action would make any attempt to refund to the motorists what they paid an administrative nightmare with no solution.

Consequently, it is not only the right, but the duty of the Court to take cognizance of and resolve the issues that the petition raises.

Although the petition does not strictly comply with the requirements of Rule 65, the Court has ample power to waive such technical requirements when the legal questions to be resolved are of great importance to the public. The same may be said of the requirement of *locus standi* which is a mere procedural requisite. [10]

B. On the Substantive Issues:

One. The relevant law in this case is Section 108 of the NIRC, as amended. VAT is levied, assessed, and collected, according to Section 108, on the gross receipts derived from the sale or exchange of services as well as from the use or lease of properties. The third paragraph of Section 108 defines "sale or exchange of services" as follows:

> **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 construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services; lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines; sales of electricity by generation companies, transmission, and distribution companies; services of franchise grantees of electric utilities, telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties.** (Underscoring supplied)

It is plain from the above that the law imposes VAT on "all kinds of services" rendered

in the Philippines for a fee, including those specified in the list. The enumeration of affected services is not exclusive. [11] By qualifying "services" with the words "all kinds," Congress has given the term "services" an all-encompassing meaning. The listing of specific services are intended to illustrate how pervasive and broad is the VAT's reach rather than establish concrete limits to its application. Thus, every activity that can be imagined as a form of "service" rendered for a fee should be deemed included unless some provision of law especially excludes it.

Now, do tollway operators render services for a fee? Presidential Decree (P.D.) 1112 or the Toll Operation Decree establishes the legal basis for the services that tollway operators render. Essentially, tollway operators construct, maintain, and operate expressways, also called tollways, at the operators' expense. Tollways serve as alternatives to regular public highways that meander through populated areas and branch out to local roads. Traffic in the regular public highways is for this reason slow-moving. In consideration for constructing tollways at their expense, the operators are allowed to collect government-approved fees from motorists using the tollways until such operators could fully recover their expenses and earn reasonable returns from their investments.

When a tollway operator takes a toll fee from a motorist, the fee is in effect for the latter's use of the tollway facilities over which the operator enjoys private proprietary rights [12] that its contract and the law recognize. In this sense, the tollway operator is no different from the following service providers under Section 108 who allow others to use their properties or facilities for a fee:

1. Lessors of property, whether personal or real;
2. Warehousing service operators;
3. Lessors or distributors of cinematographic films;
4. Proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts;
5. Lending investors (for use of money);
6. Transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land relative to their transport of goods or cargoes; and
7. Common carriers by air and sea relative to their transport of passengers, goods or cargoes from one place in the Philippines to another place in the Philippines.

It does not help petitioners' cause that Section 108 subjects to VAT "all kinds of services" rendered for a fee "regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties." This means that "services" to be subject to VAT need not fall under the traditional concept of services, the personal or professional kinds that require the use of human knowledge and skills.

And not only do tollway operators come under the broad term "all kinds of services," they also come under the specific class described in Section 108 as "all other franchise grantees" who are subject to VAT, "except those under Section 119 of this Code."

Tollway operators are franchise grantees and they do not belong to exceptions (the low-income radio and/or television broadcasting companies with gross annual incomes of less than P10 million and gas and water utilities) that Section 119 [13] spares from the payment of VAT. The word "franchise" broadly covers government grants of a special right to do an act or series of acts of public concern. [14]

Petitioners of course contend that tollway operators cannot be considered "franchise grantees" under Section 108 since they do not hold legislative franchises. But nothing in Section 108 indicates that the "franchise grantees" it speaks of are those who hold legislative franchises. Petitioners give no reason, and the Court cannot surmise any, for making a distinction between franchises granted by Congress and franchises granted by some other government agency. The latter, properly constituted, may grant franchises. Indeed, franchises conferred or granted by local authorities, as agents of the state, constitute as much a legislative franchise as though the grant had been made by Congress itself. [15] The term "franchise" has been broadly construed as referring, not only to authorizations that Congress directly issues in the form of a special law, but also to those granted by administrative agencies to which the power to grant franchises has been delegated by Congress. [16]

Tollway operators are, owing to the nature and object of their business, "franchise grantees." The construction, operation, and maintenance of toll facilities on public improvements are activities of public consequence that necessarily require a special grant of authority from the state. Indeed, Congress granted special franchise for the operation of tollways to the Philippine National Construction Company, the former tollway concessionaire for the North and South Luzon Expressways. Apart from Congress, tollway franchises may also be granted by the TRB, pursuant to the exercise of its delegated powers under P.D. 1112. [17] The franchise in this case is evidenced by a "Toll Operation Certificate." [18]

Petitioners contend that the public nature of the services rendered by tollway operators excludes such services from the term "sale of services" under Section 108 of the Code. But, again, nothing in Section 108 supports this contention. The reverse is true. In specifically including by way of example electric utilities, telephone, telegraph, and broadcasting companies in its list of VAT-covered businesses, Section 108 opens other companies rendering public service for a fee to the imposition of VAT. Businesses of a public nature such as public utilities and the collection of tolls or charges for its use or service is a franchise. [19]

Nor can petitioners cite as binding on the Court statements made by certain lawmakers

in the course of congressional deliberations of the would-be law. As the Court said in *South African Airways v. Commissioner of Internal Revenue*, [20] "statements made by individual members of Congress in the consideration of a bill do not necessarily reflect the sense of that body and are, consequently, not controlling in the interpretation of law." The congressional will is ultimately determined by the language of the law that the lawmakers voted on. Consequently, the meaning and intention of the law must first be sought "in the words of the statute itself, read and considered in their natural, ordinary, commonly accepted and most obvious significations, according to good and approved usage and without resorting to forced or subtle construction."

Two. Petitioners argue that a toll fee is a "user's tax" and to impose VAT on toll fees is tantamount to taxing a tax. [21] Actually, petitioners base this argument on the following discussion in *Manila International Airport Authority (MIAA) v. Court of Appeals*: [22]

> **No one can dispute that properties of public dominion mentioned in Article 420 of the Civil Code, like *"roads, canals, rivers, torrents, ports and bridges constructed by the State,"* are owned by the State. The term "ports" includes seaports and airports. The MIAA Airport Lands and Buildings constitute a "port" constructed by the State. Under Article 420 of the Civil Code, the MIAA Airport Lands and Buildings are properties of public dominion and thus owned by the State or the Republic of the Philippines.**
>
> **x x x The operation by the government of a tollway does not change the character of the road as one for public use. Someone must pay for the maintenance of the road, either the public indirectly through the taxes they pay the government, or only those among the public who actually use the road through the toll fees they pay upon using the road. The tollway system is even a more efficient and equitable manner of taxing the public for the maintenance of public roads.**
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> **The charging of fees to the public does not determine the character of the property whether it is for public dominion or not. Article 420 of the Civil Code defines property of public dominion as "one intended for public use." Even if the government collects toll fees, the road is still "intended for public use" if anyone can use the road under the same terms and conditions as the rest of the public. The charging of fees, the limitation on the kind of vehicles that can use the road, the speed restrictions and other conditions for the use of the road do not affect the public character of the road.**
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> **The terminal fees MIAA charges to passengers, as well as the landing fees MIAA charges to airlines, constitute the bulk of the**

income that maintains the operations of MIAA. The collection of such fees does not change the character of MIAA as an airport for public use. Such fees are often termed user's tax. This means taxing those among the public who actually use a public facility instead of taxing all the public including those who never use the particular public facility. A user's tax is more equitable - a principle of taxation mandated in the 1987 Constitution." [23] (Underscoring supplied)

Petitioners assume that what the Court said above, equating terminal fees to a "user's tax" must also pertain to tollway fees. But the main issue in the *MIAA* case was whether or not Parañaque City could sell airport lands and buildings under MIAA administration at public auction to satisfy unpaid real estate taxes. Since local governments have no power to tax the national government, the Court held that the City could not proceed with the auction sale. MIAA forms part of the national government although not integrated in the department framework." [24] Thus, its airport lands and buildings are properties of public dominion beyond the commerce of man under Article 420(1) [25] of the Civil Code and could not be sold at public auction.

As can be seen, the discussion in the *MIAA* case on toll roads and toll fees was made, not to establish a rule that tollway fees are user's tax, but to make the point that airport lands and buildings are properties of public dominion and that the collection of terminal fees for their use does not make them private properties. Tollway fees are not taxes. Indeed, they are not assessed and collected by the BIR and do not go to the general coffers of the government.

It would of course be another matter if Congress enacts a law imposing a user's tax, collectible from motorists, for the construction and maintenance of certain roadways. The tax in such a case goes directly to the government for the replenishment of resources it spends for the roadways. This is not the case here. What the government seeks to tax here are fees collected from tollways that are constructed, maintained, and operated by private tollway operators at their own expense under the build, operate, and transfer scheme that the government has adopted for expressways. [26] Except for a fraction given to the government, the toll fees essentially end up as earnings of the tollway operators.

In sum, fees paid by the public to tollway operators for use of the tollways, are not taxes in any sense. A tax is imposed under the taxing power of the government principally for the purpose of raising revenues to fund public expenditures. [27] Toll fees, on the other hand, are collected by private tollway operators as reimbursement for the costs and expenses incurred in the construction, maintenance and operation of the tollways, as well as to assure them a reasonable margin of income. Although toll fees are charged for the use of public facilities, therefore, they are not government exactions that can be properly treated as a tax. Taxes may be imposed only by the government under its sovereign authority, toll fees may be demanded by either the

government or private individuals or entities, as an attribute of ownership. [28]

Parenthetically, VAT on tollway operations cannot be deemed a tax on tax due to the nature of VAT as an indirect tax. In indirect taxation, a distinction is made between the liability for the tax and burden of the tax. The seller who is liable for the VAT may shift or pass on the amount of VAT it paid on goods, properties or services to the buyer. In such a case, what is transferred is not the seller's liability but merely the burden of the VAT. [29]

Thus, the seller remains directly and legally liable for payment of the VAT, but the buyer bears its burden since the amount of VAT paid by the former is added to the selling price. Once shifted, the VAT ceases to be a tax [30] and simply becomes part of the cost that the buyer must pay in order to purchase the good, property or service.

Consequently, VAT on tollway operations is not really a tax on the tollway user, but on the tollway operator. Under Section 105 of the Code, [31] VAT is imposed on any person who, in the course of trade or business, sells or renders services for a fee. In other words, the seller of services, who in this case is the tollway operator, is the person liable for VAT. The latter merely shifts the burden of VAT to the tollway user as part of the toll fees.

For this reason, VAT on tollway operations cannot be a tax on tax even if toll fees were deemed as a "user's tax." VAT is assessed against the tollway operator's gross receipts and not necessarily on the toll fees. Although the tollway operator may shift the VAT burden to the tollway user, it will not make the latter directly liable for the VAT. The shifted VAT burden simply becomes part of the toll fees that one has to pay in order to use the tollways. [32]

Three. Petitioner Timbol has no personality to invoke the non-impairment of contract clause on behalf of private investors in the tollway projects. She will neither be prejudiced by nor be affected by the alleged diminution in return of investments that may result from the VAT imposition. She has no interest at all in the profits to be earned under the TOAs. The interest in and right to recover investments solely belongs to the private tollway investors.

Besides, her allegation that the private investors' rate of recovery will be adversely affected by imposing VAT on tollway operations is purely speculative. Equally presumptuous is her assertion that a stipulation in the TOAs known as the Material Adverse Grantor Action will be activated if VAT is thus imposed. The Court cannot rule on matters that are manifestly conjectural. Neither can it prohibit the State from exercising its sovereign taxing power based on uncertain, prophetic grounds.

Four. Finally, petitioners assert that the substantiation requirements for claiming input VAT make the VAT on tollway operations impractical and incapable of implementation.

They cite the fact that, in order to claim input VAT, the name, address and tax identification number of the tollway user must be indicated in the VAT receipt or invoice. The manner by which the BIR intends to implement the VAT - by rounding off the toll rate and putting any excess collection in an escrow account - is also illegal, while the alternative of giving "change" to thousands of motorists in order to meet the exact toll rate would be a logistical nightmare. Thus, according to them, the VAT on tollway operations is not administratively feasible. [33]

Administrative feasibility is one of the canons of a sound tax system. It simply means that the tax system should be capable of being effectively administered and enforced with the least inconvenience to the taxpayer. Non-observance of the canon, however, will not render a tax imposition invalid "except to the extent that specific constitutional or statutory limitations are impaired." [34] Thus, even if the imposition of VAT on tollway operations may seem burdensome to implement, it is not necessarily invalid unless some aspect of it is shown to violate any law or the Constitution.

Here, it remains to be seen how the taxing authority will actually implement the VAT on tollway operations. Any declaration by the Court that the manner of its implementation is illegal or unconstitutional would be premature. Although the transcript of the August 12, 2010 Senate hearing provides some clue as to how the BIR intends to go about it, [35] the facts pertaining to the matter are not sufficiently established for the Court to pass judgment on. Besides, any concern about how the VAT on tollway operations will be enforced must first be addressed to the BIR on whom the task of implementing tax laws primarily and exclusively rests. The Court cannot preempt the BIR's discretion on the matter, absent any clear violation of law or the Constitution.

For the same reason, the Court cannot prematurely declare as illegal, BIR RMC 63-2010 which directs toll companies to record an accumulated input VAT of zero balance in their books as of August 16, 2010, the date when the VAT imposition was supposed to take effect. The issuance allegedly violates Section 111(A) [36] of the Code which grants first time VAT payers a transitional input VAT of 2% on beginning inventory.

In this connection, the BIR explained that BIR RMC 63-2010 is actually the product of negotiations with tollway operators who have been assessed VAT as early as 2005, but failed to charge VAT-inclusive toll fees which by now can no longer be collected. The tollway operators agreed to waive the 2% transitional input VAT, in exchange for cancellation of their past due VAT liabilities. Notably, the right to claim the 2% transitional input VAT belongs to the tollway operators who have not questioned the circular's validity. They are thus the ones who have a right to challenge the circular in a direct and proper action brought for the purpose.

Conclusion

In fine, the Commissioner of Internal Revenue did not usurp legislative prerogative or expand the VAT law's coverage when she sought to impose VAT on tollway operations.

Section 108(A) of the Code clearly states that services of all other franchise grantees are subject to VAT, except as may be provided under Section 119 of the Code. Tollway operators are not among the franchise grantees subject to franchise tax under the latter provision. Neither are their services among the VAT-exempt transactions under Section 109 of the Code.

If the legislative intent was to exempt tollway operations from VAT, as petitioners so strongly allege, then it would have been well for the law to clearly say so. Tax exemptions must be justified by clear statutory grant and based on language in the law too plain to be mistaken. [37] But as the law is written, no such exemption obtains for tollway operators. The Court is thus duty-bound to simply apply the law as it is found.

Lastly, the grant of tax exemption is a matter of legislative policy that is within the exclusive prerogative of Congress. The Court's role is to merely uphold this legislative policy, as reflected first and foremost in the language of the tax statute. Thus, any unwarranted burden that may be perceived to result from enforcing such policy must be properly referred to Congress. The Court has no discretion on the matter but simply applies the law.

The VAT on franchise grantees has been in the statute books since 1994 when R.A. 7716 or the Expanded Value-Added Tax law was passed. It is only now, however, that the executive has earnestly pursued the VAT imposition against tollway operators. The executive exercises exclusive discretion in matters pertaining to the implementation and execution of tax laws. Consequently, the executive is more properly suited to deal with the immediate and practical consequences of the VAT imposition.

WHEREFORE, the Court **DENIES** respondents Secretary of Finance and Commissioner of Internal Revenue's motion for reconsideration of its August 24, 2010 resolution, **DISMISSES** the petitioners Renato V. Diaz and Aurora Ma. F. Timbol's petition for lack of merit, and **SETS ASIDE** the Court's temporary restraining order dated August 13, 2010.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Del Castillo, Villarama, Jr., Perez, and *Mendoza, JJ.*, concur.
Bersamin, J., on leave.
Sereno, J., on official leave.

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[1] *Rollo*, pp. 3-14.

[2] Id. at 63-64.

[3] Id. at 143-144.

[4] Id. at 73-135.

[5] The OSG cites VAT Ruling 045-03 (October 13, 2003) issued by then Deputy Commissioner Jose Mario Bunag in response to a query by the Philippine National Construction Corporation (PNCC) on its VAT liability as operator of the South and North Luzon expressways. PNCC was informed "that with the promulgation of R.A. 7716 restructuring the VAT system, **services of all franchise grantees,** x x x are already subject to VAT." The ruling was apparently clarified and reiterated in BIR Revenue Memorandum Circulars 52-2005 (September 28, 2005), 72-2009 (December 21, 2009) and 30-2010 (March 26, 2010).

[6] *Rollo*, pp. 153-201.

[7] Id. at 457-476.

[8] *Macasiano v. National Housing Authority*, G.R. No. 107921, July 1, 1993, 224 SCRA 236, 243.

[9] See *Ernesto B. Francisco, Jr. and Jose Ma. O. Hizon v. Toll Regulatory Board*, G.R. No. 166910, October 19, 2010.

[10] Id.

[11] *Commissioner of Internal Revenue v. SM Primeholdings, Inc.*, G.R. No. 183505, February 26, 2010, 613 SCRA 774, 788.

[12] See *North Negros Sugar Co. v. Hidalgo*, 63 Phil. 664, 690 (1936).

[13] SEC. 119. Tax on Franchises. - Any provision of general or special law to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchises on radio and/or television broadcasting companies whose annual gross receipts of the preceding year do not exceed Ten million pesos (P10,000,000), subject to Section 236 of this Code, a tax of three percent (3%) and on electric, gas and water utilities, a tax of two percent (2%) on the gross receipts derived from the business covered by the law granting the franchise: Provided, however, That radio and television broadcasting companies referred to in this Section shall have an option to be registered as a value-added taxpayer and pay the tax due thereon; Provided, further, That once the option is exercised, said option shall be irrevocable.

[14] *Associated Communications & Wireless Services v. National Telecommunications Commission*, 445 Phil. 621, 641 (2003).

[15] *Philippine Airlines, Inc. v. Civil Aeronautics Board*, 337 Phil. 254, 265 (1997).

[16] *Metropolitan Cebu Water District v. Adala*, G.R. No. 168914, July 4, 2007, 526 SCRA 465, 476.

[17] Supra note 9.

[18] Section 3(e), P.D. 1112.

[19] 36 Am Jur 2d S3.

[20] G.R. No. 180356, February 16, 2010, 612 SCRA 665, 676.

[21] *Rollo*, p. 517.

[22] G.R. No. 155650, July 20, 2006, 495 SCRA 591.

[23] Id. at 622-623.

[24] Id. at 618.

[25] Art. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

x x x x

[26] See first and third "Whereas Clause" of P.D. 1112.

[27] See *Law of Basic Taxation in the Philippines (Revised Ed.)*, Benjamin B. Aban, p. 14.

[28] See *The Fundamentals of Taxation (2004 Ed.)*, Hector S. De Leon and Hector M. De Leon, Jr., p. 16.

[29] *Contex Corporation v. Commissioner of Internal Revenue*, G.R. No. 151135, July 2, 2004, 433 SCRA 376, 384-385.

[30] *The National Internal Revenue Code Annotated, Eighth Ed.(Vol. II)*, Hector S. De

Leon and Hector M. De Leon, Jr., p. 3.

[31] SEC. 105. Persons Liable. Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, rendered services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.

x x x x

The phrase `in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a nonstock, nonprofit private organization (irrespective of the disposition of its net income) and whether or not it sells exclusively to members or their guests), or government entity.

[32] Supra note 27, at 24-25.

[33] *Rollo*, p. 540.

[34] *Tax Law and Jurisprudence, Third Edition (2006)*, Justice Jose C. Vitug and Justice Ernesto D. Acosta, pp. 2-3.

[35] *Rollo*, pp. 246-254.

[36] SEC. 111. Transitional/Presumptive Input Tax credits.-

(A) Transitional Input Tax Credits.- A person who becomes liable to value-added tax or any person who elects to be a VAT-registered person shall, subject to the filing of an inventory according to rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to two percent (2%) of the value of such inventory or the actual value-added tax paid on such goods, materials, and supplies, whichever is higher, which shall be creditable against the output tax.

[37] Supra note 27, at 119.