

THIRD DIVISION

[G.R. NO. 144696, August 16, 2006]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
PHILIPPINE GLOBAL COMMUNICATIONS, INC., RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

Is respondent telecommunications company, Philippine Global Communications, Inc., liable to pay the 3% franchise tax under Section 117 (b) of Presidential Decree No. 1158 or the 1977 National Internal Revenue Code (Tax Code) during the suspension of the enforcement or implementation of Republic Act No. 7716^[1] or the Expanded Value Added Tax Law (E-VAT Law) which was passed in 1994 amending such provision of the Tax Code?

Respondent operates under a legislative franchise granted by Republic Act No. 4617 to construct, maintain and operate communications systems by radio, wire, satellite and other means known to science for the reception and transmission of messages between any points in the Philippines to points exterior thereto. As such, it was subject to 3% franchise tax under Section 117 (b) of the Tax Code, as amended by Executive Order No. 72, which provided:

SECTION 117. *Tax on franchises.* – Any provision of general or special laws to the contrary notwithstanding, there shall be levied, assessed and collected in respect to all franchise, upon the gross receipts from the business covered by the law granting the franchise, a tax in accordance with the schedule prescribed hereunder:

- | | | |
|--|-------|------|
| (a) On electric utilities, city gas and water supplies..... | Two | (2%) |
| percent | | |
| (b) <u>On telephone and/or telegraph systems, and</u> <u>radio/or broadcasting stations</u> | Three | (3%) |
| percent | | |
| (c) On other franchises..... | Five | (5%) |
| percent | | |

The grantee shall file with, and pay the tax due thereon to, the Commissioner of Internal Revenue or his duly authorized representative in accordance with the provisions of Section 125 of this Code, and the return shall be subject to audit by the Bureau of Internal Revenue, any provision of any existing law to the contrary notwithstanding.
(Underscoring supplied)

The said provision of the Tax Code was amended by Section 12 of the E-VAT Law which was passed in 1994, reading:

SEC. 12. Section 117 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

SEC. 117. *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 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.

The grantee shall file the return with, and pay the tax due thereon to, the Commissioner of Internal Revenue or his duly authorized representative in accordance with the provisions of Section 125 of this Code and the return shall be subject to audit by the Bureau of Internal Revenue, any provision of any existing law to the contrary notwithstanding.

As the immediately quoted Section 12 of the E-VAT Law shows, the payment of 3% franchise tax by a telecommunications company required under Section 117 (b) of the Tax Code was omitted.

Section 21 of the E-VAT law provides that the amendatory law "shall take effect fifteen (15) days after its complete publication in the Official Gazette **or** in at least (2) national newspapers of general circulation whichever comes earlier." The E-VAT Law was published in the **Malaya** and the **Journal** on May 12, 1994. It was published in the **Official Gazette** on August 1, 1994. It therefore became effective on May 28, 1994, or 15 days after its first publication in the said newspapers.

On June 30, 1994, this Court, in the consolidated cases of "*Tolentino et al. v. Secretary of Finance, et al.*" (G.R. Nos. 115455, 115525, 115543, 115544, 115754 and 115781) assailing the constitutionality of the E-VAT Law, issued a Temporary Restraining Order (TRO) enjoining the "enforce[ment] and/or implement[ation]" of said law. The TRO was later to be lifted, however, on October 30, 1995.

On account of the suspension of the implementation of the E-VAT Law, respondent filed on May 20, 1996 with the Appellate Division, Tax Refund/Credit of the Bureau of Internal Revenue (BIR) a claim for refund^[2] of the 3% franchise tax it allegedly erroneously paid during the 2nd quarter of 1994 until the 4th quarter of 1995 in the total amount of P70,795,150.51, itemized as follows:

| Period Covered | Date Paid | Total |
|---------------------------|-----------------|---------------------|
| 2 nd Qtr. 1994 | 20 July 1994 | P 9,380,243.00 |
| 3 rd Qtr. 1994 | 20 October 1994 | 10,892,806.80 |
| 4 th Qtr. 1994 | 20 January 1995 | 14,645,196.78 |
| 1 st Qtr. 1995 | 20 April 1995 | 9,512,684.78 |
| 2 nd Qtr. 1995 | 20 July 1995 | 9,870,148.49 |
| 3 rd Qtr. 1995 | 22 October 1995 | 8,586,305.90 |
| 4 th Qtr. 1995 | 22 January 1996 | <u>7,907,764.76</u> |
| | | P 70,795,150.51 |

Respondent claimed that with the passage and effectivity of the E-VAT Law on May 24 [sic], 1994, it was no longer obliged to pay the 3% franchise tax under Section 117 (b) of the Tax Code.^[3]

Respondent added that the TRO issued in *Tolentino et al.* enjoining the enforcement and/or implementation of the E-VAT Law did not have the effect of extending its obligation under Section 117 (b) of the Tax Code to pay the 3% franchise tax since the exemption from or removal of liability for said 3% franchise tax under the E-VAT Law was not an issue in those cases; and with the effectivity of the E-VAT Law on May 24 [sic], 1994, it was benefited by the tax exemption which was self-operative and required no implementation to take effect.^[4]

The BIR having failed to act on its claim, respondent filed a petition for review^[5] before the Court of Tax Appeals (CTA) against herein petitioner Commissioner of Internal Revenue.

By Decision of October 2, 1997,^[6] the CTA granted respondent's claim for refund, holding that the dropping of the provision of Section 117 (b) and (c) of the Tax Code in the E-VAT Law constitutes an express amendment by deletion,^[7] and the clear legislative intent was to exempt respondent from payment of the 3% franchise tax.^[8]

Moreover, the CTA held that the TRO issued by this Court in *Tolentino et al.* did not have the effect of suspending the exclusion of herein respondent from liability for the 3% franchise tax^[9] since the TRO "has the effect of merely suspending the implementation but not the effectivity of [RA 7716] which is primarily a legislative function,"^[10] it adding that once the TRO is lifted, "the law should be implemented as it is written and shall take effect on the date the law requires it to take effect."

^[11] The CTA explained:

It is of the considered opinion of this Court that the exclusion of petitioner by way of an express amendment by deletion started immediately upon the effectivity of Republic Act No. 7716 on May 28, 1994 and with the continuing validity and operation of said Act notwithstanding the issuance of the TRO, such exclusion remain uninterrupted. As this Court sees it, the exclusion or deletion requires no enforcement and/or implementation to be applicable, which would thereby cover it within the ambit of the TRO. The words "enforcement" and "implementation" as applied to the ACT would necessitate the promulgation of rules and regulations which, in turn, demand some positive acts to be done by concerned taxpayers who will become liable to the tax, i.e., declaration and payment of taxes and compliance with reporting procedures. Exclusion or exemption, however, falls in a different class as the taxpayer so deleted or exempted is not duty bound to do any positive or negative act. xxx In this sense, the exemption or deletion benefiting petitioner can thus be stated beyond cavil to be one that is self-operative.

In the light of the foregoing reasons, this Court joins the petitioner in its

submission that "only those provisions in R.A. 7716 which need to be implemented by the BIR were restrained but those **provisions which are self-operative such as the grant of tax exemption or removal of a tax liability, which does not need implementation by the BIR to be effective, were already enjoyed by those entitled thereto upon the effectivity of the law.**"^[12] (Emphasis and underscoring supplied)

Thus the CTA ordered petitioner to "REFUND the amount of P70,795,150.51" to respondent.

Its motion for reconsideration of the CTA Decision having been denied, petitioner filed a petition for review before the Court of Appeals.

By Decision of August 21, 2000,^[13] the appellate court affirmed that of the CTA. Hence, the present petition for review.

The petition is impressed with merit.

The amendment of a law, being part of the original which is already in force and effect, must necessarily become effective as part of the amended law at the time the amendment takes effect.^[14]

Under the earlier quoted Section 12 of the E-VAT Law, only the franchise tax on "electric, gas and water utilities" was retained. The 3% franchise tax on "telephone and/or telegraph systems and radio broadcasting stations" to which category respondent belongs was omitted.

Under Section 3 of the E-VAT Law, however, respondent's sale of services is subject to VAT, ^[15] thus:

SEC. 3. Section 102 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

SEC. 102. 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, as value-added tax equivalent to 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 construction and service contractors; x x x services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 117 of this Code; x x x (Underscoring supplied)

In fine, under the E-VAT Law, respondent ceased to be liable to pay the 3% franchise tax. It instead is made liable to pay 10% VAT on sale of services.