

EN BANC

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

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), PETITIONER, VS. THE BUREAU OF INTERNAL REVENUE, REPRESENTED BY JOSE MARIO BUÑAG, IN HIS CAPACITY AS COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE, AND JOHN DOE AND JANE DOE, WHO ARE PERSONS ACTING FOR, IN BEHALF OR UNDER THE AUTHORITY OF RESPONDENT, RESPONDENT.

D E C I S I O N

PERALTA, J.:

The present petition stems from the Motion for Clarification filed by petitioner Philippine Amusement and Gaming Corporation (*PAGCOR*) on September 13, 2013 in the case entitled *Philippine Amusement and Gaming Corporation (PAGCOR) v. The Bureau of Internal Revenue, et al.*,^[1] which was promulgated on March 15, 2011. The Motion for Clarification essentially prays for the clarification of our Decision in the aforesaid case, as well the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction against the Bureau of Internal Revenue (*BIR*), their employees, agents and any other persons or entities acting or claiming any right on *BIR*'s behalf, in the implementation of *BIR* Revenue Memorandum Circular (*RMC*) No. 33-2013 dated April 17, 2013.

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

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

- (a) **TREAT** as a new petition the Motion for Clarification with Temporary Restraining Order and/or Preliminary Injunction Application dated September 6, 2013 filed by *PAGCOR*;
- (b) **DIRECT** the Judicial Records Office to **RE-DOCKET** the aforesaid Motion for Clarification, subject to payment of the appropriate docket fees; and
- (c) **REQUIRE** petitioner *PAGCOR* to **PAY** the filing fees

for the subject Motion for Clarification within five (5) days from notice hereof. Brion, J., no part and on leave. Perlas-Bernabe, J., on official leave.

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

The facts are briefly summarized as follows:

On April 17, 2006, petitioner filed before this Court a *Petition for Review on Certiorari and Prohibition (With Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction)* seeking the declaration of nullity of Section 1^[2] of Republic Act (R.A.) No. 9337^[3] insofar as it amends Section 27(C)^[4] of R.A. No. 8424,^[5] otherwise known as the National Internal Revenue Code (NIRC) by excluding petitioner from the enumeration of government-owned or controlled corporations (GOCCs) exempted from liability for corporate income tax.

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

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

No costs.

SO ORDERED.^[7]

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

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

II. INCOME TAX

Pursuant to Section 1 of R.A. 9337, amending Section 27(C) of the NIRC,

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

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

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

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

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

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

III. FRANCHISE TAX

Pursuant to Section 13(2) (a) of P.D. No. 1869,^[9] PAGCOR is subject to a franchise tax of five percent (5%) of the gross revenue or earnings it derives from its operations and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, and other related operations as described above.

On May 20, 2011, petitioner wrote the BIR Commissioner requesting for

reconsideration of the tax treatment of its income from gaming operations and other related operations under RMC No. 33-2013. The request was, however, denied by the BIR Commissioner.

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

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

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

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

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

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

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

income tax, and consequently, to withholding tax under existing regulations.

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

- a) Income from licensed private casinos covered by authorities to operate issued to private operators;
- b) Income from traditional bingo, electronic bingo and other bingo variations covered by authorities to operate issued to private operators;
- c) Income from private internet casino gaming, internet sports betting and private mobile gaming operations;
- d) Income from private poker operations;
- e) Income from junket operations;
- f) Income from SM demo units; and
- g) Income from other necessary and related services, shows and entertainment.^[12]

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

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

SECTION 13. Exemptions. –

x x x x

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