

## EN BANC

[ 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.**

### D E C I S I O N

**PERALTA, J.:**

For resolution of this Court is the Petition for *Certiorari* and Prohibition<sup>[1]</sup> 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 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<sup>[2]</sup> on January 1, 1977. Simultaneous to its creation, P.D. No. 1067-B<sup>[3]</sup> (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.<sup>[4]</sup> Thereafter, on June 2, 1978, P.D. No. 1399 was issued expanding the scope of PAGCOR's exemption.<sup>[5]</sup>

To consolidate the laws pertaining to the franchise and powers of PAGCOR, P.D. No. 1869<sup>[6]</sup> 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 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 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).<sup>[7]</sup>

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,<sup>[8]</sup> 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 (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.<sup>[9]</sup>

With the enactment of R.A. No. 9337<sup>[10]</sup> 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<sup>[11]</sup> 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 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.<sup>[12]</sup>

On the same date, respondent BIR issued Revenue Regulations (RR) No. 16-2005,<sup>[13]</sup> 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.**

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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 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.<sup>[14]</sup>

The BIR, in its Comment<sup>[15]</sup> 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 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,<sup>[16]</sup> 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