

26 January 2005

LEGAL ADVISORY NO. 06

**TO : ALL ELECTRIC COOPERATIVES
ALL NEA OFFICES CONCERNED**

SUBJECT : TAX REMEDIES FOR ELECTRIC COOPERATIVES

The various tax collection agencies of the government, both national and local, have been intensifying their collection efforts to help assuage the continuing financial effects of the fiscal crisis. That is why a number of our electric cooperatives have been at the receiving end of various tax assessments and related tax collection efforts.

Our electric cooperatives (ECs) have valid and legal reasons to question such tax assessments considering that the National Internal Revenue Code and the Local Government Code allow our ECs various tax exemption privileges in addition to those provided for in Presidential Decree No. 269. These tax privileges have been thoroughly discussed in our legal advisories nos. 01 and 03.

Most of the tax collection officials, especially those with the Local Government Units are not aware of the service orientation and non-profit nature of our ECs. They do not realize that our ECs, have spurred growth and development in the Philippine countryside by bringing electricity to the financially unviable rural areas which no profit-oriented electric distribution utility would electrify. They do not realize that the electricity rates being charged by all our ECs are just enough to cover actual costs with no margin whatsoever for profit. In fact, the electricity rates of ECs do not usually include any amount for tax, whether national or local.

The missionary service of the ECs is vital to the welfare of the Filipinos and the sound development of the nation. That is why PD 269 has declared it a national policy that ECs be given every tenable support and assistance by the National Government, its instrumentalities and agencies.

In the face of taxes questionably imposed upon the ECs, any or some or several of the following remedies may be taken by the EC:

1. Dialogue with tax officials (including local executives and members of local *sanggunians*) to explain to them the non-profit nature and missionary service orientation of ECs and the fact the EC's rates do not include any cost component to cover the tax being levied/imposed. The

explanation on the missionary service orientation should include the fact that ECs bring electricity to the rural areas which are generally not financially viable compared to the urban centers electrified by profit-oriented private electric distribution utilities: Electrifying the rural areas require longer electric lines hence higher systems loss and maintenance costs but lesser number of consumers and lesser quantity of electricity consumed; therefore, lesser revenue.

It is also important to emphasize, in these representations/dialogues, that imposing tax would only force the ECs to include this tax as an additional cost component in its rates. Hence resulting to a higher rate which would be detrimental to its member-consumers who normally represent practically the entire population in the area served by the EC. Such increase in power rates would discourage investors and businesses from coming in and growth and development in the local area would be stalled. It is even likely the present businesses and investors would move out of the local area whose electricity rates have become too high by reason of the taxes imposed.

Certainly, the local officials imposing the tax would not like the foregoing detrimental effects to happen in their locality unless they do not mind losing in the next election.

2. Advocate for better tax laws and ordinances. In the case of national taxes, this is a long-term solution that is not yet viable now that the government is suffering a fiscal crisis. For local taxes, the EC may take advantage of the provisions of the Local Government Code on Local Initiative and Referendum found in Sections 120 to 127.

Not less than one thousand (1,000) registered voters in case of provinces and cities and one hundred (100) in case of municipalities, may file a petition with the local *sanggunian* concerned proposing the adoption, enactment, repeal or amendment of a tax ordinance. This petition may propose the granting of a tax amnesty to the EC, an exemption from all local taxes for the EC, or both.

The local *sanggunian* has the power to favorable act on the proposal. If no favorable action is taken thereon by the local *sanggunian* concerned within thirty (30) days from its presentation, the proponents, through their duly authorized and registered representatives, may invoke their power of initiative, giving notice thereof to the *sanggunian* concerned. The Comelec or its designated representative shall extend assistance in the formulation of the proposition.

If the required number of signatures is obtained within the prescribed period of ninety (90) days in case of provinces and cities, and sixty (60) days in case of municipalities, the Comelec shall set a date for the initiative during which the proposition shall be submitted to the registered voters in the local government unit for their approval.

If the proposition is approved by a majority of the votes cast, it shall take effect fifteen (15) days after certification by the Comelec as if affirmative action thereon had been taken by the *sanggunian* and local chief executive concerned.

Any proposition or ordinance approved through the system of initiative and referendum as provided in the Local Government Code shall not be repealed, modified or amended by the

sanggunian concerned within six (6) months from the date of the approval thereof, and may be amended, modified or repealed by the *sanggunian* within three (3) years thereafter by a vote of three-fourths (3/4) of all its members.

The various local taxes allowed under the Local Government Code are not self-executory. It is necessary that a tax ordinance be passed imposing such allowed local taxes in the local government unit concerned. Absent such tax ordinance, or absent the required public hearing pre-requisite to the passage of such tax ordinance, the local government unit is bereft of authority to impose the tax.

Local government units have the power to grant tax exemptions, incentives or reliefs (including relief to ECs performing non-profit missionary service) under such terms and conditions as they may deem necessary. Such power to grant tax exemptions, incentives or reliefs may be exercised through ordinances duly approved (Section 192, R.A. 7160), or through the system of initiative and referendum (Sections 120 to 127, R.A. 7160).

3. Protest the tax imposed through legal action.

In the case of national taxes administered by the Bureau of Internal Revenue (such as VAT, Income Tax, Percentage Tax and National Franchise Tax), the following remedies for each corresponding situation may be resorted to:

- a.) Assessments issued by the Commissioner or his duly authorized representative may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing the protest, all relevant supporting documents should have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty-day (180) period; otherwise, the decision shall become final, executory and demandable.

- b.) Taxes, penalties or any sum erroneously or illegally collected by the Bureau of Internal Revenue (BIR) may be recovered by filing a claim for refund or credit with the BIR Commissioner. An adverse decision of the BIR on such claim may be assailed before the Court of Tax Appeals (CTA) pursuant to its exclusive appellate jurisdiction under Section 7 of Republic Act No. 1125, as amended by Section 7 of Republic Act No. 9282. In any case, no suit or proceeding shall be filed (with the CTA or elsewhere) after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment.

In the case of local taxes other than real property tax, the following remedies for each corresponding situation may be availed:

- a.) Assessments issued by the local treasurer or his duly authorized representative may be contested by filing a written protest with the local treasurer within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. Any denial of such protest, in whole or in part or inability of the local treasurer to decide the protest within the prescribed sixty (60) days period will give the taxpayer the right to appeal with the court of competent jurisdiction within thirty (30) days from receipt of the denial of the protest or from the lapse of the aforesaid sixty (60) days prescribed period. Failure to appeal within the thirty-day period would make the assessment conclusive and unappealable.
- b.) Local taxes, fees or charges erroneously or illegally collected by the local government unit may be recovered by filing a written claim for refund or credit with the local treasurer. An adverse decision of the local treasurer on such claim may be pursued with the court of competent jurisdiction. The court will not entertain any case or proceeding on such claim adversely decided by the local treasurer if such is filed after the expiration of two (2) years from the date of the payment of such tax, fee or charge, or from the date the taxpayer is entitled to a refund or credit.

In the case of real property tax, the following remedies for each corresponding situation may be resorted to:

- a.) Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.

In the exercise of its appellate jurisdiction, the Board shall have the power to summon witnesses, administer oaths, conduct ocular inspection, take depositions, and issue subpoena and subpoena duces tecum. The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings.

The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property

or the person having legal interest therein of such fact using the form prescribed for the purpose. The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board, may, within thirty (30) days after receipt of the decision of said Board, appeal to the Central Board of Assessment Appeals, as herein provided. The decision of the Central Board shall be final and executory.

Appeal on assessments of real property made under the provisions of this Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved as assessed by the provincial or city assessor, without prejudice to subsequent adjustment depending upon the final outcome of the appeal.

Pursuant to the Court of Tax Appeal's exclusive appellate jurisdiction, the decisions of the Central Board of Assessment Appeals in the exercise of the Board's appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the local board of assessment appeals, may be elevated to the CTA for review.

- b.) Any owner of real property affected by a special levy or any person having a legal interest therein may, upon receipt of the written notice of assessment of the special levy, avail of the remedies provided for in Chapter 3, Title Two, Book II of this Code. These remedies are already described in the immediately preceding item "a" above.
- c.) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest." The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.

In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

In the event that the protest is denied or upon the lapse of the sixty day period prescribed hereinabove, the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of the Local Government Code. These remedies are the same as those already described in the immediately preceding item "a" above.

- d.) Within one (1) year from the date of sale, the owner of the delinquent real property or person having legal interest therein, or his representative, shall have the right to redeem the property upon payment to the local treasurer of the amount of the delinquent tax, including the interest due thereon, and the expenses of sale from the date of delinquency to the date of sale, plus interest of not more than two

(2%) per month on the purchase price from the date of sale to the date of redemption. Such payment shall invalidate the certificate of sale issued to the purchaser and the owner of the delinquent real property or person having legal interest therein shall be entitled to a certificate of redemption which shall be issued by the local treasurer or his deputy.

From the date of sale until the expiration of the period of redemption, the delinquent real property shall remain in the possession of the owner or person having legal interest therein who shall be entitled to the income and other fruits thereof.

The local treasurer or his deputy, upon receipt from the purchaser of the certificate of sale, shall forthwith return to the latter the entire amount paid by him plus interest of not more than two percent (2%) per month. Thereafter, the property shall be free from the lien of such delinquent tax, interest due thereon and expenses of sale.

- e.) A taxpayer or person having legal interest in the property sold who wants to question or assail the validity of real property tax sale (A real property tax sale is a sale by public auction of real property or rights therein to satisfy non-payment of real property tax.) should first deposit with the court the amount for which the property is sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. After which the taxpayer may then file the appropriate legal action assailing the validity of the real property tax sale. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

The new and relevant remedial provisions brought about by Republic Act No. 9282 are quoted in toto and may be availed by the concerned EC whenever applicable and practicable. These are the recently amended provisions of Republic Act No. 1125:

Sec. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: Provided, however, that with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made

by filing a petition for review under a procedure analogous to that provided for under rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case en banc.

All other cases involving rulings, orders or decisions filed with the CTA as provided for in Section 7 shall be raffled to its Divisions. A party adversely affected by a ruling, order or decision of a Division of the CTA may file a motion for reconsideration or new trial before the same Division of the CTA within fifteen (15) days from notice thereof: Provided, however, that in criminal cases, the general rule applicable in regular Courts on matters of prosecution and appeal shall likewise apply.

No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry and Secretary of Agriculture, as the case may be, shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided, however, that when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer, the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

In criminal and collection cases covered respectively by Section 7(b) and (c) of this Act, the Government may directly file the said cases with the CTA covering amounts within its exclusive and original jurisdiction.

Sec. 13. Decision, Maximum Period for Termination of Cases. – Cases brought before the Court shall be decided in accordance with Section 15, paragraph (1), Article VIII (Judicial Department) of the 1987 Constitution. Decisions of the Court shall be in writing, stating clearly and distinctly the facts and the law on which they are based, and signed by the Justices concurring therein. The Court shall provide for the publication of its decision in the Official Gazette in such form and manner as may best be adopted for public information and use.

The Justices of the Court shall each certify on their applications for leave, and upon salary vouchers presented by them for payment, or upon the payrolls under which their salaries are paid, that all proceedings, petitions and motions which have been submitted to the Court for determination or decision for a period required by the law or the Constitution, as the case may be, have been determined or decided by the Court on or before the date of making the certificate, and no leave shall be granted and no salary shall be paid without such certificate.

Sec. 18. Appeal to the Court of Tax Appeals En Banc. – No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein

provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

A party adversely affected by a resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA en banc.

Sec. 19. Review by Certiorari. – A party adversely affected by a decision or ruling of the CTA en banc may file with the Supreme Court a verified petition for review on certiorari pursuant to Rule 45 of the 1997 Rules of Civil Procedure.

"Distrain of Personal Property and/or Levy on Real Property. - Upon the issuance of any ruling, order or decision by the CTA favorable to the national government, the CTA shall issue an order authorizing the Bureau of Internal Revenue, through the Commissioner to seize and distrain any goods, chattels, or effects, and the personal property, including stocks and other securities, debts, credits, bank accounts, and interests in and rights to personal property and/or levy the real property of such persons in sufficient quantity to satisfy the tax or charge together with any increment thereto incident to delinquency. This remedy shall not be exclusive and shall not preclude the Court from availing of other means under the Rules of Court." (Section 13 of R.A. No. 9282)

Legal actions should be resorted to only as a last recourse after all applicable extra-legal, friendly, win-win remedies have been exhausted to no avail. If warranted by the facts and evidence and the dictates of justice and the welfare of the electricity consumers, criminal cases for violation of Section 3 of the Anti-Graft and Corrupt Practices Act may also be filed against abusive or grossly negligent tax collection and local government officials.

For your information and guidance.


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Noted by:


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