NATIONAL ELECTRIFICATION ADMINISTRATION
"The 1st Performance Governance System-Institutionalized National Government Agency"
57 NIA Road, Government Center, Diliman, Quezon City 1100

20 August 2014

LEGAL ADVISORY NO. 18

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

SUBJECT : **INCOME TAX EXEMPTION OF ELECTRIC COOPERATIVES ORGANIZED UNDER P.D. 269**

This Legal Advisory is intended to categorically address the widespread queries coming from electric cooperatives (ECs) on whether or not ECs registered with National Electrification Administration (NEA) are subject to income tax and the minimum corporate income tax (MCIT).

At the outset, we reiterate NEA's stand on the matter which have been stated as early as 2004 in our Legal Advisory No.3 dated 20 July 2004, copy of which is hereto attached for ready reference as Annex A:

1. ECs registered with NEA are permanently exempted from income tax pursuant to Section 39 (a) (1) of Presidential Decree No. 269 which provision is still effective. Section 39 of PD 269 provides:

> Section 39. Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation. Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperatives is necessary and appropriate:
>
> (a) Provided that it operates in conformity with the purposes and provisions of this Decree, cooperatives (1) shall be permanently exempt from paying income taxes, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree: Provided, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree.

(b) The National Power Corporation shall, except with respect to the National Government, give preference in the sale of its power and energy to cooperatives, and shall otherwise provide the maximum support of and assistance to cooperatives of which it is capable, including assistance in developing dependable and reliable arrangements for their supplies of bulk power, either from itself, or from other sources. In pursuance of the foregoing policy, the National Power Corporation shall not, except upon prior written agreement approved by the cooperative's board, compete in the sale of power and energy which without regard to the location of the point of delivery thereof, will be utilized and consumed within any area franchised to a cooperative.

This stand of NEA was upheld in 2006 by no less than Assistant Commissioner James H. Roldan of the Legal Service of the Bureau of Internal Revenue (BIR) in his letter to OIC Revenue District Officer Roberto S. Bucoy dated March 14, 2006 with Reference No. DA-108-2006 clarifying Paragraph A(4) of BIR Revenue Memorandum Circular (RMC) No. 72-2003 and categorically stating:

> "The exemption of ECs from income tax, on the other hand is permanent in nature as expressly provided in No. 1 of Section 39 (a) of P.D. 269."

Copies of the BIR RMC No. 72-2003 and the above-stated Legal Opinion of BIR Assistant Commissioner James H. Roldan are hereto attached as Annexes "B" and "C", respectively for ready reference.

2. ECs registered with NEA are likewise permanently exempted from the MCIT for the simple reason that MCIT is an income tax. The foregoing stand of NEA find support in the En Banc Decision of the Court of Appeals in C.T.A. EB No. 460 promulgated on March 11, 2010. For your ready reference, a copy of said Decision is hereto attached as Annex "D"

For your information and guidance.

ATTY. JOHN JOSEPH M.MAGTULOY, CPA
Deputy Administrator for Legal Services Office

NOTED BY:

EDITA S. BUENO
Administrator

NATIONAL ELECTRIFICATION ADMINISTRATION
Office of the Administrator
NEA-OA208794

8/22/14

Attachments as stated:

Annex "A" -Legal Advisory No. 3
Annex "B" -BIR RMC No. 72-2003
Annex "C" -BIR Legal Opinion DA-108-2006
Annex "D" -En Banc Decision of the Court of Appeals in C.T.A EB No. 460.

ANNEX A

Copy of the LTA

LEGAL DEPT
FILE COPY

Republic of the Philippines
National Electrification Administration

20 July 2004

NEA Records Section
RECEIVED
JUL 26 2004
By:

LEGAL ADVISORY NO. 03

TO : ALL ELECTRIC COOPERATIVES
ALL NEA OFFICES CONCERNED

SUBJECT : NATIONAL TAX EXEMPTION PRIVILEGES OF ELECTRIC COOPERATIVES ORGANIZED UNDER P.D. 269

For purposes of tax exemption privileges of electric cooperatives (ECs) organized under Presidential Decree No. 269, national taxes applicable to ECs may be classified into two:

1. Permanent Exemption Taxes – Those of which the ECs are permanently exempted; and
2. Temporary Exemption Taxes – Those of which the ECs are exempted but only temporarily for a period ending on December 31 of the thirtieth full calendar year after the date of a cooperative's organization or conversion (under PD 269) or until the EC shall become completely free of indebtedness incurred by borrowing, whichever event first occurs.

ECs organized and operating pursuant to P.D. 269, as amended, are PERMANENTLY exempted from the following national taxes:

1. Income tax – as provided in Section 39 (a) (1) of PD 269;
2. Franchise tax – as provided in Section 119 of the Tax Code of 1997 and as ruled in BIR Ruling No. DA-250-03 dated July 31, 2003 which held that since ECs are not holders of legislative franchise, they are not subject to franchise tax imposed under Section 119 of the Tax Code of 1997. The fact that the (EC) members of APEC are not registered with the Cooperative Development Authority does not remove them from the coverage of said exemption from franchise tax.
3. Value – Added Tax on sales relative to the generation and distribution of electricity as well as their importation of machineries and equipments, including spare parts, which shall be directly used in the generation and distribution of electricity – as provided in Section 109 (s) of the Tax Code of 1997.

4. Three Percent (3%) Percentage Tax – as provided in Section 116 of the Tax Code of 1997.

Our ECs are permanently exempted from the foregoing taxes for the simple reason that there is an effective provision of law that grants the exemption. Those other national taxes for which there is no effective provision of law granting exemption therefrom independent of Section 39 (a) (2) of PD 269 are deemed to fall under our classification of Temporary Exemption Taxes. The EC must pay these other national taxes (temporary exemption taxes) once the EC becomes completely free from indebtedness incurred by borrowing or after December 31 of the thirtieth full calendar year after the date of the EC's organization or conversion pursuant to PD 269; whichever event first occurs.

The foregoing legal advices, just like those in Legal Advisory Nos. 01 and 02, dated 15 June 2004 and 25 June 2004, respectively, are merely views and legal opinions of this Office, based on researches intended to provide assistance to electric cooperatives. These views and opinions shall remain as such unless and until the appropriate Court has ruled on them with finality. ECs are therefore encouraged to pursue test cases on these.

For your ready reference, we have attached pertinent provisions of law/ruling/circular reproduced in toto.

For your information and guidance.

ATTY. JOHN JOSEPH M. MAGTULOY, CPA
Deputy Administrator for Legal Services

Noted by:

NATIONAL ELECTRIFICATION ADMINISTRATION
OR005212

EDITA S. BUENO
Administrator

Attachments as stated:
1. Section 39 of PD 269
2. Section 119 of the Tax Code of 1997
3. BIR Ruling No. DA-250-03
4. Section 109 of the Tax Code of 1997
5. Section 116 of the Tax Code of 1997
6. Revenue Memorandum Circular No. 72-2003
7. Republic Act No. 8241

1. Section 39 of PD 269.

Sec.39. Assistance to Cooperative; Exemption from Taxes, Impost, Duties, Fees; Assistance from the National Power Corporation. Pursuant to the national policy declared in section 2, the Congress hereby finds and declares that the following assistance to cooperatives is necessary and appropriate:

(a) Provided that it operates in conformity with the purposes and provision of this Decree, a cooperative (1) shall be permanently exempt from paying income taxes, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (A) of all National Government, local government and municipal taxes and fees, including any franchise filing, recordation, license or permit fees or taxes and any fees, charges, or cost involved in any court or administrative proceeding in which it may be a party, and (B) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree; **Provided**, that the Board of Administrators shall after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemption provided for in this Decree.

(b) The National Power Corporation shall, except with respect to the National Government, give preference in the sale of its power and energy to cooperatives, and shall otherwise provide the maximum support of and assistance to cooperatives of which it is capable, including assistance in developing dependable and reliable arrangements for their supplies of bulk power, either from itself, or from other sources. In pursuance of the foregoing policy, the National Power Corporation shall not, except upon prior written agreement approved by the cooperative's board, compete in the sale of power and energy which without regard to the location of the point of delivery thereof, will be utilized and consumed within any area franchised to a cooperative.

2. Section 119 of the Tax Code of 1997.

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 does 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, it shall not be revoked.

The grantee shall file the return with, and pay the tax due thereon to the Commissioner or his duly authorized representative, in accordance with the provisions of Section 128 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. (117) (as amended by R.A. No. 7416 and No. 8241)

3. BIR Ruling No. DA- 250-03.

(BIR Ruling: ECs registered with NEA – exemption from franchise tax imposed under Section 119 of the Tax Code of 1997.)

4. Section 109 of the Tax Code of 1997.

Sec. 109. Exempt Transactions – The following shall be exempt from the value-added tax:

x x x

(s) Sales by electric cooperatives duly registered with the Cooperative Development Authority or National Electrification Administration, relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity;

x x x

The foregoing exemptions to the contrary notwithstanding, any person whose sale of goods or properties or services which are otherwise not subject to VAT, but who issues a VAT invoice or receipt therefore shall, in addition to his liability to other applicable percentage tax, if any, be liable to the tax imposed in Section 106 or 108 without the benefit of input tax credit, and such tax shall also be recognized as input tax credit to the purchaser under Section 110, all of this Code. (103)

5. Section 116 of the Tax Code of 1997.

Sec. 116. Tax on Persons Exempt from Value-added Tax (VAT). – Any person whose sales or receipts are exempt under Section 109 (z) of this Code from payment of value-added tax and who is not a VAT-registered person shall pay a tax equivalent to three percent (3%) of his gross quarterly sales or receipts: Provided, That cooperatives shall be exempt from the three percent (3%) gross receipts tax herein imposed.(112)

6. Revenue Memorandum Circular No. 72-2003.

Tax implications of Electric Cooperatives registered with the National Electrification Administration and Cooperative Development Authority.

7. Republic Act No. 8241.

An act amending Republic Act No. 7716, otherwise known as the expanded value-added tax law and other pertinent provisions of the National Internal Revenue Code as amended.

BIR RULING [DA-250-03]
P.D. 269; 119 #069-98
Association of Philippine Electric Cooperatives
(APEC-Party List)
Room 604, North Wing Building,
House of Representatives,
Constitution Hills, Quezon City
Attention: Messrs. Ernesto C. Pablo, Edgar L. Valdez
and Sunny R.A. Madamba
Representatives
Gentlemen :

This refers to your letter dated February 24, 2003 requesting for confirmation of your opinion that electric cooperatives registered with the National Electrification Administration ("NEA") are exempt from franchise tax imposed under Section 119 of the Tax Code of 1997. IHCDAS

It is represented that the Association of Philippine Electric Cooperatives ("APEC") is a national organization of rural electric cooperatives. The cooperatives were all created, established and registered with the NEA pursuant to the provisions of Presidential Decree (PD) No. 269, as amended. In DOJ Opinion No. 41, dated April 23, 1996, the Department of Justice ruled that registration with the CDA is optional. Thus, the members of APEC opted not to register with CDA. IHTaCE

In reply, please be informed that electric cooperatives are exempt from the franchise tax imposed under Section 119 of the National Internal Revenue Code of 1997 pursuant to the ruling of this Office in BIR Ruling No. 069-98 dated May 21, 1998, viz:

"In reply, please be informed that the 2% tax imposed under Section 117 of the Tax Code, as amended (now Section 119 of the Tax Code of 1997), is due and payable by electric utilities who are holders of legislative franchises. As an electric cooperative you are not subject to the said 2% franchise tax by reason of the fact that you are not a legislative franchisee but is created by virtue of R.A. No. 6938, otherwise known as the Cooperative Code of the Philippines. Moreover, pursuant to Section 103(s) also of the Tax Code (now Section 109(s) of the Tax Code of 1997), sales by electric cooperatives duly registered with the CDA or the National Electrification Administration (NEA), relative to the generation and distribution of electricity, as well as their importation of machineries and equipment, including spare parts, which shall be used directly in the generation and distribution of electricity shall be exempt from VAT."

It is clear from the foregoing ruling that the electric utilities, not being a cooperative, subject to franchise tax under Section 119 of the NIRC of 1997 are those which are grantees of a legislative franchise. It does not apply to electric cooperatives.

In fact, under Section 2(d) of Revenue Regulations No. 4-88, "Withholding of Taxes on Money Payments by Government Offices, Agencies and Instrumentalities." Dated January 21, 1988, a government money payments to electric cooperatives are not subject to the 2% franchise tax, to wit: DSEaHT

"SECTION 2. Internal Revenue Taxes Required to be Withheld. — Percentage taxes on gross money payments to the following are subject to withholding:

xxx xxx xxx

(d) Franchise grantees on their gross receipts from the business covered by the law granting the franchise, at the following rates:

1. On electric utilities, city gas and water supplies . . . Two (2%) percent, except electric and local waterworks cooperatives pursuant to Memorandum Order No. 65, dated January 21, 1987 of the President."

The fact that the members of APEC are not registered with the Cooperative Development Authority does not remove them from the coverage of said exemption from franchise tax. In DOJ Opinion No. 41, dated April 23, 1996, the Department of Justice opined that electric cooperatives registered with the National Electric Administration have the same status as those registered with the Cooperative Development Authority, to wit: DHESca

"Based on these premises, it is believed that registration with the CDA under Republic Act (RA) No. 6938 is optional insofar as ECs are concerned. Hence, some ECs may opt not to register with the CDA, or if they do choose to register with the CDA, may fail to qualify registration under RA No. 6938. In either case, the ECs shall not lose their status as registered ECs under PD No. 269, as amended, and shall continue to be governed by said PD No. 269. However, they shall not be entitled to the other privileges granted to CDA — registered electric cooperatives under RA No. 6938."

In fine, since members of APEC are not holders of legislative franchise, they are not subject to the franchise tax imposed under Section 119 of the Tax Code of 1997.

Accordingly, your opinion that electric cooperatives registered with NEA are exempt from the 2% franchise tax imposed under the aforementioned Section 119 of the Tax Code of 1997, is hereby confirmed.

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void. TSHIDa

Very truly yours,

Commissioner of Internal Revenue

By.

(SGD.) JOSE MARIO C. BUÑAG

Deputy Commissioner

Legal & Inspection Group

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

October 20, 2003

REVENUE MEMORANDUM CIRCULAR NO. 72-2003

SUBJECT: **Tax implications of Electric Cooperatives registered with the National Electrification Administration and Cooperative Development Authority.**

TO : All Internal Revenue Officials, Employees and other Concerned.

To all internal revenue officers and others concerned, please be informed that:

A. Electric Cooperatives (ECs) registered with the National Electrification Administration (NEA) are exempt from:

1. Franchise tax under Section 119 of the Tax Code of 1997 (BIR Ruling No. DA-250-03 dated July 31, 2003);

2. Value-Added tax, on sales relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity [Sec. 109(s) of the Tax Code of 1997];

3. Income taxes for which they are directly liable [P.D. No. 269, Sec. 39 (a)(1)];

4. All National Government taxes and fees, including franchise, filing, recordation, license or permit fees or taxes. Provided, however, that the said exemption shall end on December 31 of the thirtieth full calendar year after the date of a cooperative's organization or conversion, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs. Provided further, that the period of exemption for a new cooperative formed by

consolidation, as provided in Section 29 of P.D. No. 269, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under P.D. No. 269 [P.D. No. 269, Sec. 39(a)(2)]; and

5. Three Percent (3%) Percentage Tax under Sec. 116 of the Tax Code of 1997.

B. Electric Cooperatives (ECs) registered with the Cooperative Development Authority (CDA).

1. For ECs that do not transact any business with nonmembers or the general public:

a. Franchise taxes under Section 119 of the Tax Code of 1997 (BIR Ruling No. DA-250-03 dated July 31, 2003);

b. Income Tax on income from operations;

c. Value-Added tax, on sales relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity [Sec. 109(s) of the Tax Code of 1997];

d. Three Percent (3%) Percentage Tax under Sec. 116 of the Tax Code of 1997;

e. Donor's Tax on donations to duly accredited charitable, research and educational institutions, and reinvestment to socio-economic projects within the area of operation of the ECs;

f. Excise Tax under Title VI of the Tax Code of 1997;

g. Documentary Stamp Tax imposed under Title VII of the Tax Code of 1997. Provided, however, that the other party to the taxable document/transaction who is not exempt shall be the one directly liable for the tax and;

h. Annual Registration Fee of P500.00 under Section 236(B) of the Tax Code of 1997.

2. For cooperatives transacting business with both members and nonmembers:

a. If ECs transact business with members, all national internal revenue taxes for which they are directly liable as enumerated under paragraph B-(1) hereof;

b. If ECs transact business with nonmembers and have an accumulated reserves and undivided net savings of not more than Ten Million Pesos (P10,000,000.00), all national internal revenue taxes for which they are directly liable as enumerated under paragraph B.(1) hereof;

Such ECs shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified by the Department of Trade and Industry. All tax-free importations shall not be transferred to any person until after five (5) years, otherwise, the EC and the transferee or assignee shall be solidarily liable to pay twice the amount of the tax and/or duties thereon.

c. If ECs transact business with nonmembers and have an accumulated reserves and undivided net savings of more than Ten Million Pesos (P10,000,000.00), it shall be exempt from the following taxes:

i. income tax for a period of ten (10) years from date of registration with the CDA. Provided, that at least twenty five percent (25%) of the net income of the EC is returned to the members in the form of interest and/or patronage refund;

ii. Value-Added tax, on sales relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity [Sec. 109(s) of the Tax Code of 1997];

iii. Annual Registration Fee of P500.00 under Section 236(B) of the Tax Code of 1997; and

iv. Donations to charitable, research and educational institutions and investment to socioeconomic projects within the area of operation of the cooperative may be tax deductible.

However, it shall be subject to the following taxes:

i. Income Tax after the expiration of the exemption- On the amount allocated for interest on capital; Provided, That the same tax is not consequently imposed on interest individually received by members;

ii. Sales Tax after the expiration of the exemption- On sales to nonmembers; and

iii. All other taxes unless otherwise provided herein.

All ECs under this paragraph, regardless of the amount of accumulated reserves and undivided net savings shall be exempt from payment of taxes on transactions with banks and insurance companies: Provided, That all sales or services rendered for nonmembers shall be subject to the applicable percentage taxes except sales made by producers, marketing or service cooperatives: Provided, further, That nothing in this RMC shall preclude the examination of the books of accounts or other accounting records of the EC by duly authorized internal revenue officers for internal revenue tax purposes only, after previous authorization by the CDA.

All ECs, whether it be registered with the NEA or CDA, shall be subject to:

a. 20% final income tax on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties derived from sources within the Philippines.

b. 7.5% final income tax on interest income derived from a depositary bank under the expanded foreign currency deposit system;

c. Capital Gains Tax on sales or exchanges of real property classified as capital assets or shares of stock;

d. Documentary Stamp Taxes on transactions of ECs dealing with non-members when the accumulated reserves and undivided net savings of such cooperatives exceed Ten Million Pesos (P10,000,000.00);

e. VAT billed on purchases of goods and services not exempt.

f. All other taxes for which the ECs are not otherwise expressly exempted by any law.

Moreover, all ECs are considered as withholding agents and are required to file withholding tax returns and remit withholding taxes on all income payments that are subject to withholding.

Please be guided accordingly.

(Original Signed)
GUILLERMO L. PARAYNO, JR.
Commissioner

December 20, 1996

REPUBLIC ACT NO. 8241

AN ACT AMENDING REPUBLIC ACT NO, 7716, OTHERWISE KNOWN AS THE EXPANDED VALUE-ADDED TAX LAW AND OTHER PERTINENT PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE AS AMENDED

SECTION 1. Section 3 of Republic Act No. 7716 is hereby amended to read as follows:

"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, a value-added tax equivalent to ten percent (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; 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, air, and water relative to their transport of goods or cargoes; 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; services of banks, non-bank financial intermediaries and finance companies; 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. The phrase 'sale or exchange of services' shall likewise include:

"(1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;

"(2) The lease or the use of, or the right to use of any industrial, commercial or scientific equipment;

"(3) The supply of scientific, technical, industrial or commercial knowledge or information;

"(4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any such knowledge or information as is mentioned in subparagraph (3);

"(5) The supply of services by a nonresident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery, or other apparatus purchased from such nonresident person;

"(6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;

"(7) The lease of motion picture films, films, tapes and discs and;

"(8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time.

"Lease of properties shall be subject to the tax herein imposed irrespective of the place where the contract of lease or licensing agreement was executed if the property is leased or used in the Philippines.

"The term 'gross receipts' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

"(b) Transactions subject to zero percent (0%) rate. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate;

"(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for the in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

"(2) Services other than those mentioned in the preceding subparagraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

"(3) Services rendered to persons or entities whose exemption under laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

"(4) Services rendered to vessels engaged exclusively in international shipping; and

"(5) Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production.

"(c) Determination of the Tax. — The tax shall be computed by multiplying the total amount indicated in the official receipt by 1/11."

SECTION 2. Section 4 of Republic Act No. 7716 is hereby amended to read as follows:

"Sec. 4. Section 103 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Sec. 103. Exempt Transactions. — The following shall be exempt from the value-added tax:

"(a) Sale of nonfood agricultural products; marine and forest products in their original state by the primary producer or the owner of the land where the same are produced;

"(b) Sale of cotton and cotton seeds in their original state and copra;

"(c) Sale or importation of agricultural and marine food products in their original state, livestock and poultry of a kind, generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefor.

"Products classified under this paragraph and paragraph (a) shall be considered in their original state even if they have undergone the simple processes of preparation or

preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking or stripping. Polished and/or husked rice, corn grits, raw cane sugar and molasses, and ordinary salt shall be considered in their original stated;

"(d) Sale or importation of fertilizers; seeds, seedlings and fingerlings; fish, prawn, livestock and poultry feeds, including ingredients, whether locally produced or imported, used in the manufacture of finished feeds (except specialty feeds for race horses, fighting cocks, aquarium fish, zoo animals and other animals generally considered as pets);

"(e) Sale or importation of coal and natural gas, in whatever form or state, and petroleum products (Except lubricating oil processed gas, grease, wax, and petrolatum) subject to excise tax imposed under Title VI;

"(f) Sale or importation of raw materials to be used by the buyer or importer himself in the manufacture of petroleum products subject to excise tax, except lubricating oil, processed gas, grease, wax, and petrolatum;

"(g) Importation of passenger and/or cargo vessel of more than five thousand tons, whether coastwise or ocean-going, including engine and spare parts of said vessel to be used by the importer himself as operator thereof;

"(h) Importation of personal and household effects belonging to the residents of the Philippines returning from abroad and nonresident citizens coming to resettle in the Philippines: Provided, That such goods are exempt from customs duties under the Tariff and Customs Code in the Philippines;

"(i) Importation of professional instruments and implements, wearing apparel, domestic animals, and personal household effects (except any vehicle, vessel, aircraft, machinery, other goods for use in the manufacture and merchandise of any kind in commercial quantity) belonging to persons coming to settle in the Philippines, for their own use and not for sale, barter or exchange, accompanying such persons, or arriving within ninety (90) days before or after their arrival, upon the production of evidence satisfactory to the Commissioner of Internal Revenue; that such persons are actually coming to settle in the Philippines and that the change of residence is bona fide;

"(j) Services subject to percentage tax under Title V;

"(k) Services by agricultural contract growers and milling for others of palay into rice, corn into grits and sugar case into raw sugar;

"(l) Medical, dental, hospital and veterinary services subject to the provisions of Section 17 of Republic Act No. 7716, as amended;

"(m) Educational services rendered by private educational institutions, duly accredited by the Department of Education, Culture and Sports (DECS) and the Commission on Higher Education (CHED), and those rendered by government educational institutions;

"(n) Sale by the artist himself of his works or art, literary works, musical compositions and similar creations, or his services performed for the production of such works;

"(o) Services rendered by individuals pursuant to an employer-employee relationship;

"(p) Services rendered by regional or area headquarters established in the Philippines by multinational corporations which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region and do not earn or derive income from the Philippines;

"(q) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree Nos. 66, 529, and 1590;

"(r) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale or their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;

"(s) Sales by electric cooperatives duly registered with the Cooperative Development Authority or National Electrification Administration, relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity;

"(t) Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority whose lending operation is limited to their members;

"(u) Sales by non-agricultural, non-electric and non-credit cooperatives duly registered with the Cooperative Development Authority: Provided, That the share capital contribution of each member does not exceed Fifteen thousand pesos (P15,000.00) and regardless of the aggregate capital and net surplus ratably distributed among the members;

"(v) Export sales by persons who are not VAT-registered;

"(w) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business or realty property utilized for low-cost and socialized housing as defined by Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992, and other related laws, house and lot and other residential dwellings valued at One million pesos (P1,000,000.00) and below: Provided, That not later than January 31st of the calendar year subsequent to the effectivity of this Act and each calendar year thereafter, the amount of One million pesos (P1,000,000.00) shall be adjusted to its present value using the consumer price index, as published by the National Statistics Office (NSO);

"(x) Lease of a residential unit with a monthly rental not exceeding Eight thousand pesos (P8,000.00): Provided, That not later than January 31st of the calendar year subsequent to the effectivity of this Act and each calendar year thereafter, the amount of Eight thousand pesos (P8,000.00) shall be adjusted to its present value using the consumer price index, as published by the National Statistics Office (NSO);

"(y) Sale, importation, printing or publication of books and any newspaper, magazine, review, or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements;

"(z) Sale or lease of goods or properties or the performance of services other than the transactions mentioned in the preceding paragraphs, the gross annual sales and/or receipts do not exceed the amount of Five hundred fifty thousand pesos (P550,000.00): Provided, That not later than January 31st of the calendar year subsequent to the effectivity of this Act and each calendar year thereafter, the amount of Five hundred fifty thousand pesos (P550,000.00) shall be adjusted to its present value using the consumer price index, as published by the National Statistics Office (NSO);

"The foregoing exemptions to the contrary notwithstanding any person whose sale of goods or properties or services which are otherwise not subject to VAT, but who issues a VAT invoice or receipt therefor shall, in addition to his liability to other applicable

percentage tax, if any, be liable to the tax imposed in Section 100 or 102 without the benefit of input tax credit, and such tax shall not also be recognized as input tax credit to the purchaser under Section 104, all of this Code."

SECTION 3. Section 105 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Sec. 105. 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 as prescribed by regulations, be allowed input tax on his beginning inventory of goods, materials and supplies equivalent to eight percent (8%) 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.

"(b) Presumptive input tax credits. — (1) Persons or firms engaged in the processing of sardines, mackerel, and milk, and in manufacturing refined sugar and cooking oil, shall be allowed a presumptive input tax, creditable against the output tax, equivalent to one and one-half percent (1.5%) of the gross value in money of their purchases of primary agricultural products which are used as inputs to their production.

"As used in this paragraph (b), the term 'processing' shall mean pasteurization, canning and activities which through physical or chemical process alter the exterior texture or form or inner substance of a product in such manner as to prepare it for special use to which it could not have been put in its original form or condition.

"(2) Public works contractors shall be allowed a presumptive input tax equivalent to one and one-half percent (1.5%) of the contract price with respect to government contracts only in lieu of actual input taxes therefrom."

SECTION 4. Section 7 of Republic Act No. 7716 is hereby amended to read as follows:

"Sec. 7. Section 107 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Sec. 107. Registration of value-added taxpayers. — (a) In General. — Any person subject to a value-added tax under Sections 100 and 102 of this Code shall register with the appropriate Revenue District Officer and pay an annual registration fee in the amount of One thousand pesos (P1,000.00) for every separate or distinct establishment or place of business and every year thereafter on or before the last day of January. Any person just commencing a business subject to the value-added tax must pay the fee before engaging therein.

"A Person who maintains a head or main office and branches in different places shall register with the Revenue District Office which has jurisdiction over the place wherein the main or head office is located. However, the fee shall be paid to the Revenue district Officer, collection agent, authorized treasurer of the municipality where each place of business or branch is situated.

"(b) Persons commencing business. — Any person who expects to realize gross sales or receipts subject to valued-added tax in excess of the amount prescribed under Section 103(z) of this Code for the next 12-month period from the commencement of the business shall, within thirty (30) days before the start of the said business register with the Revenue District Officer who has jurisdiction over his principal place of business and shall pay the annual registration fee prescribed in the preceding paragraph.

"(c) Persons becoming liable to the value-added tax. — Any person whose gross sales or receipts in any 12-month period exceeds the amount prescribed under Section 103(z) of this Code for exemption from the value-added tax shall register and pay the annual registration fee prescribed in paragraph (a) of this section within thirty (30) days after the end of the last month of that period, and shall be liable to the valued-added tax commencing from the first day of the month following his registration.

"(d) Optional registration of exempt person. — Any person whose transactions are exempt from value-added tax under Section 103(z) of this Code, Section 103(a), (b), (c), and (d) of this Code with respect to export sales only, and Section 103(j) with respect to service of franchise grantees of radio and/or television broadcasting as defined under Section 117 of this Code, may apply for registration as a VAT-registered person not later than ten (10) days before the beginning of the taxable quarter and shall pay the annual registration fee prescribed in subparagraph (a) of this section.

"In any case, the Commissioner may, for administrative reason, deny any application for registration.

"For purposes of this Title, any person registered in accordance with the provisions of this section shall be referred to as a 'VAT-registered person.' Each VAT-registered person shall be assigned only one taxpayer's identification number.

"(e) Cancellation of registration. — The registration of any person who ceases to be liable to the valued-added tax shall be cancelled by the Commissioner upon filing of an application for cancellation of registration. Any person who opted to be registered under paragraph (d) of this section may, under regulation of the Secretary of Finance, apply for cancellation of such registration."

SECTION 5. Section 9 of Republic Act No. 7716 is hereby amended to read as follows:

"Sec. 9. Section 110(c) of the National Internal Revenue Code, is hereby further amended to read as follows:

"(c) Withholding of Creditable Value-Added Tax. — The government or any of its political subdivisions, instrumentalities or agencies, including government-owned or controlled corporations (GOCCs) shall, before making payment on account of each purchase of goods from sellers and services rendered by contractors which are subject to the value-added tax imposed in Section 100 and 102 of this Code, deduct and withhold the value-added tax due at the rate of three percent (3%) of the gross payment for the purchase of goods and six percent (6%) on gross receipts for services rendered by contractors on every sale or installment payment which shall be creditable against the valued-added tax liability of the seller or contractor: Provided, however, That in the case of government public works contractors, the withholding rate shall be eight and one-half percent (8.5%): Provided, further, That the payment for lease or use of properties or property rights to nonresident owners shall be subject to ten percent (10%) withholding tax at the time of payment. For this purpose, the payor or person in control of the payment shall be considered as the withholding agent.

'The value-added tax withheld under this section shall be remitted with ten (10) days following the end of the month the withholding was made.'

SECTION 6. Section 10 of Republic Act No. 7716 is hereby amended to read as follows:

"Sec. 10. Section 112 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Sec. 112. Tax on persons exempt from value-added tax (VAT). — Persons whose sales or receipts are exempt under Section 103(z) of this Code from the payment of value-added tax and who is not a VAT-registered person shall pay a tax equivalent to three percent (3%) of his gross quarterly sales or receipts: Provided, That cooperatives shall be exempt from the three percent (3%) gross receipt tax herein imposed."

SECTION 7. Section 11 of Republic Act No. 7716 is hereby amended to read as follows:

'Sec. 11. Section 115 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Sec. 115. Percentage tax on domestic carriers and keepers of garages. — Cars for rent or hire driven by the lessee, transportation contractors, including persons who transport passenger for hire, and other domestic carriers by land, air or water, for the transport of passengers, except owners of bancas, and owners of animal-drawn two-wheeled vehicle, and keepers of garages shall pay a tax equivalent to three per centum (3%) of their quarterly gross receipts.

"The gross receipts of common carriers derived from their incoming and outgoing freight shall not be subjected to the local taxes imposed under Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

"In computing the percentage tax provided in this section, the following shall be considered the minimum quarterly gross receipts in each particular case:

"Jeepney for hire —

"1. Manila and other cities P2,400.00

"2. Provincial 1,200.00

"Public utility bus —

"Not exceeding 30 passengers P3,600.00

"Exceeding 30 but not exceeding 50 passengers 6,000.00

"Exceeding 50 passengers 7,200.00

"Taxis —

"1. Manila and other cities P3,600.00

"2. Provincial 3,400.00

"Car for hire (w/chauffeur) 3,000.00

"Car for hire (w/o chauffeur) 1,800.00"

SECTION 8. A new section is hereby added after Section 115 of the National Internal Revenue Code, as amended, to read as follows:

"Sec. 115-A. Percentage tax on international carriers. —

"a) International air carriers doing business in the Philippines shall pay a tax of three per centum (3%) of their quarterly gross receipts.

"(b) International shipping carriers doing business in the Philippines shall pay a tax equivalent to three percent (3%) of their quarterly gross receipts."

SECTION 9. Section 12 of Republic Act No. 7716 is hereby amended to read as follows:

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

"Sec. 117. Tax on franchise. — 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 does not exceed Ten million pesos (P10,000,000.00), subject to Section 107(d) of this Code, a tax of two 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 tax payer and pay the tax due thereon: Provided, further, That once the option is exercised, it shall not be revoked.

"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."

SECTION 10. Section 15 of Republic Act No. 7716 is hereby amended to read as follows:

"Sec. 15. Section 237 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Sec. 237. Registration of Name or Style with the Revenue District Officer or Collection Agent. — Every person, other than persons required to be registered under the provisions of Section 107 engaged in any business shall, on or before the commencement of his business shall, on or before the commencement of his business, or whenever he transfers to another revenue district, register with the Revenue District Officer concerned within 10 days from the commencement of business or transfer and shall pay the annual registration fee in the amount of Five hundred pesos (P500.00) for every separate or distinct establishment or place of business and every year thereafter on or before the last day of January. The fee shall be paid to the Revenue District Officer, collection agent, authorized treasurer of the municipality where each place of business or branch is situated. In cities or municipalities where no Revenue District Officer is stationed, such person shall register and pay the fee prescribed herein with the collection agent. The registration shall contain his name or style, place of where such business is carried on, and such other information as may be required by the Commissioner in the form prescribed therefor. In the case of a firm, the names and residences of the various persons constituting the same shall also be registered. The Commissioner, after taking into consideration the volume of sales, financial condition and other relevant factors, may require the registrant to guarantee the payment of his taxes by way of advance payment, or the posting or filing of a security, guarantee or collateral acceptable to the Commissioner: Provided, however, That cooperatives shall not pay the registration fee imposed herein.'

SECTION 11. Section 17 of Republic Act No. 7716 is hereby amended to read as follows:

"Sec. 17. Effectivity of the Imposition of VAT on Certain Goods, Properties and Services. — The value-added tax shall be levied, assessed and collected on the following transactions, starting January 1, 1998:

"(a) Services performed in the exercise of profession or calling subject to the professional tax under the Local Government Code of Republic Act No. 7160, and professional services performed by registered general professional partnerships; actors,

actresses, talents, singers and emcees; radio and television broadcasters, choreographers; musical, radio, movie, television and stage directors; and professional athletes;

"(b) Services rendered by banks, non-bank financial intermediaries, finance companies and other financial intermediaries, not performing quasi-banking functions; and

"(c) The lease or use of sports facilities and equipment by amateur players, as provided under Republic Act No. 6847, except sports facilities and equipment which are exclusively or mainly for the private use of shareholders or members of the club or organization which owns or operates such sports facilities and equipment.

"Prior to their inclusion in the coverage of the valued-added tax the above services shall continue to pay the applicable tax prescribed under the present provisions of the National Internal Revenue Code, as amended.

"However, when public interest so requires, the Congress of the Republic of the Philippines, taking into account the impact on prices of goods and services, may, exclude any of the above services from the coverage of the value-added tax: Provided, however, That in the event of the exclusion of any of the above services the existing applicable tax under the provisions of the National Internal Revenue Code, as amended, shall continue to be paid on the service so excluded."

SECTION 12. Rules and Regulations. — For the effective implementation of this act, the Secretary of Finance shall, upon the recommendation of the Commissioner of Internal Revenue, promulgate the necessary rules and regulations, within sixty (60) days from effectivity hereof: Provided, That other agencies, such as, but not limited to, the Philippine Information Agency (PIA), Office of the Press Secretary (OPS), the Bureau of Internal Revenue (BIR) and the Department of Trade and Industry (DTI), shall develop and implement an Information, Education and Communication (IEC) campaign program with the end in view of effectively informing the public on the details of the expanded valued-added tax implementation. cdtai

SECTION 13. Repealing Clause. — The provisions of Republic Act No. 6938, otherwise known as the Cooperative Code of the Philippines, authorizing the exemption of cooperatives from the sales or value-added tax are hereby repealed. All other laws, orders, issuances, rules and regulations or parts thereof which are not consistent with this Act are hereby repealed amended or modified accordingly.

SECTION 14. Effectivity. — This Act shall take effect on January 1, 1997.

Approved: December 20, 1996

ANNEX "B"

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

BUREAU OF INTERNAL REVENUE
RECORDS DIVISION
OCT 24 2003

Quezon City DIVISION
RECEIVED
OCT 2003

October 20, 2003

REVENUE MEMORANDUM CIRCULAR NO. 72-2003

SUBJECT : Tax implications of Electric Cooperatives registered with the National Electrification Administration and Cooperative Development Authority.

TO : All Internal Revenue Officials, Employees and other Concerned

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To all internal revenue officers and others concerned, please be informed that:

A. Electric Cooperatives (ECs) registered with the National Electrification Administration (NEA) are exempt from:

1. Franchise tax under Section 119 of the Tax Code of 1997 (BIR Ruling No. DA-250-03 dated July 31, 2003);

2. Value-Added tax, on sales relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity [Sec. 109(s) of the Tax Code of 1997];

3. Income taxes for which they are directly liable [P.D. No. 269, Sec. 39(a)(1)];

4. All National Government taxes and fees, including franchise, filing, recordation, license or permit fees or taxes. Provided, however, that the said exemption shall end on December 31 of the thirtieth (30th) calendar year after the date of a cooperative's organization or conversion, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs. Provided further, that the period of exemption for a new cooperative organized by

BUREAU OF INTERNAL REVENUE
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consolidation, as provided in Section 29 of P.D. No. 269, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under P.D. No. 269 [P.D. No. 269, Sec. 39(a)(2)]; and

5. Three Percent (3%) Percentage Tax under Sec. 116 of the Tax Code of 1997.

B. Electric Cooperatives (ECs) registered with the Cooperative Development Authority (CDA).

1. For ECs that do not transact any business with nonmembers or the general public:

   a. Franchise taxes under Section 119 of the Tax Code of 1997 (BIR Ruling No. DA-250-03 dated July 31, 2003);

   b. Income Tax on income from operations;

   c. Value-Added tax, on sales relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity [Sec. 109(s) of the Tax Code of 1997];

   d. Three Percent (3%) Percentage Tax under Sec. 116 of the Tax Code of 1997;

   e. Donor's Tax on donations to duly accredited charitable, research and educational institutions, and reinvestment to socio-economic projects within the area of operation of the ECs;

   f. Excise Tax under Title VI of the Tax Code of 1997;

   g. Documentary Stamp Tax imposed under Title VII of the Tax Code of 1997. Provided, however, that the other party to the taxable document/transaction who is not exempt shall be the one directly liable for the tax; and

   h. Annual Registration Fee of P500.00 under Section 236(B) of the Tax Code of 1997.

2. For cooperatives transacting business with both members and nonmembers:

a. If ECs transact business with members, all national internal revenue taxes for which they are directly liable as enumerated under paragraph B(1) hereof;

b. If ECs transact business with nonmembers and have an accumulated reserves and undivided net savings of not more than Ten Million Pesos (P10,000,000.00), all national internal revenue taxes for which they are directly liable as enumerated under paragraph B(1) hereof;

Such ECs shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified by the Department of Trade and Industry. All tax-free importations shall not be transferred to any person until after five (5) years, otherwise, the EC and the transferee or assignee shall be solidarily liable to pay twice the amount of the tax and/or duties thereon.

c. If ECs transact business with nonmembers and have an accumulated reserves and undivided net savings of more than Ten Million Pesos (P10,000,000.00), it shall be exempt from the following taxes:

i. income tax for a period of ten (10) years from date of registration with the CDA, Provided, that at least twenty five percent (25%) of the net income of the EC is returned to the members in the form of interest and/or patronage refund;

ii. Value-Added tax, on sales relative to the generation and distribution of electricity as well as their importation of machineries and equipment, including spare parts, which shall be directly used in the generation and distribution of electricity [Sec. 109(s) of the Tax Code of 1997];

iii. Annual Registration Fee of P500.00 under Section 236(D) of the Tax Code of 1997; and

iv. Donations to charitable, research and educational institutions and investment to socioeconomic projects within the area of operation of the cooperative may be tax deductible.

However, it shall be subject to the following taxes:

i. Income Tax after the expiration of the exemption– On the amount allocated for interest on capital; Provided, That the same tax is not consequently imposed on interest individually received by members;

ii. Sales Tax after the expiration of the exemption – On sales to nonmembers; and

iii. All other taxes unless otherwise provided herein.

All ECs under this paragraph, regardless of the amount of accumulated reserves and undivided net savings shall be exempt from payment of taxes on transactions with banks and insurance companies: Provided, That all sales or services rendered for nonmembers shall be subject to the applicable percentage taxes except sales made by producers, marketing or service cooperatives: Provided, further, That nothing in this RMC shall preclude the examination of the books of accounts or other accounting records of the EC by duly authorized internal revenue officers for internal revenue tax purposes only, after previous authorization by the CDA.

All ECs, whether it be registered with the NEA or CDA, shall be subject to:

a. 20% final income tax on interest from any currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties derived from sources within the Philippines.

b. 7.5% final income tax on interest income derived from a depository bank under the expanded foreign currency deposit system;

62 c. Capital Gains Tax on sales or exchanges of real property classified as capital assets or shares of stock;

d. Documentary Stamp Taxes on transactions of ECs dealing with non-members when the accumulated reserves and undivided net savings of such cooperatives exceed Ten Million Pesos (P10,000,000.00);

e. VAT billed on purchases of goods and services not exempt.

f. All other taxes for which the ECs are not otherwise expressly exempted by any law.

Moreover, all ECs are considered as withholding agents and are required to file withholding tax returns and remit withholding taxes on all income payments that are subject to withholding..

Please be guided accordingly.

GUILLERMO L. PARAYNO, JR.
Commissioner

Compensation
rent
retainer's fees 1/1/04 Rev. Reg 30. 2003
Sworn Declaration
using June - annual
Income

new rate in prof
10% - 720,000 below
15% - 720,000 up

Per Diem

BUREAU OF INTERNAL REVENUE
RECORDS DIVISION
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ANNEX C

POD

12-APR-2006 09:31 FINANCEDIVISION T-Z 991 0606 P:01

FAX: New Group (005) 212-4241

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

2004

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RODULFO
ADMIN. OFFICER II

MR. ROBERTO S. BUCOY
OIC-Revenue District Officer
Revenue District Office No. 91
Dipolog City

Sir:

This refers to your letter dated January 25, 2006 requesting for clarification on the taxability of Electric Cooperatives as provided under Revenue Memorandum Circular (RMC) No. 72-2003, particularly paragraph A(4) thereof, to wit:

"A. Electric Cooperatives (ECs) registered with the National Electrification Administration (NEA) are exempt from:

1. XXX XXX XXX;

2. XXX XXX XXX;

3. XXX XXX XXX;

4. All National Government taxes and fees, including franchise, filing, recordation, license or permit fees or taxes. Provided, however, that the said exemption shall end on December 31 of the thirtieth full calendar year after the date of a cooperative's organization or conversion, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs. Provided further, that the period of exemption for a new cooperative formed by consolidation, as provided in Section 29 of P.D. No. 269, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under P.D. No. 269 [P.D. No. 269, Sec. 39(a)(2)];"
(Underscoring supplied)

On the other hand, Section 39 of PD 269 provides, viz:

"SEC. 39. *Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation.* – Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperatives is necessary and appropriate:

(a) Provided that it operates in conformity with the purposes and provisions of this Decree, a cooperative (1) shall be permanently exempt from paying income taxes, and (2) for a period ending on December 31, of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs,

Dear

shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or administrative proceeding in which it may be a party; and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized or converted under this Decree; *Provided*, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree." (Underscoring supplied)

From the aforequoted provision of PD 269, it is clear that the exemption accorded to ECs registered with NEA is limited only until December 31 of the thirtieth full calendar year reckoned from the date of a cooperative's organization or conversion, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs.

However, exemptions covered by the 30 year-period or until completely free of indebtedness refer only to No. 2 of Section 39(a) of PD 269, *i.e.*, franchise tax, value-added tax, 3% percentage tax and other taxes, except income tax.

The exemption of ECs from income tax, on the other hand, is permanent in nature, as expressly provided in No. 1 of Section 39(a) of PD 269.

In view of the foregoing, this Office opines that the exemption of ECs from income tax is not among those tax exemptions being limited by No. 2 of Section 39(a) of PD 269.

Very truly yours,

Commissioner of Internal Revenue
By:

JAMES H. ROLDAN
Assistant Commissioner
Legal Service

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gps(rdo 91)

ANNEX "D"

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner, -versus- **SAMAR-I ELECTRIC COOPERATIVE, INC.,** Respondent.	**C.T.A. EB No. 460** **(C.T.A. CASE No. 6697)**
SAMAR-I ELECTRIC COOPERATIVE, INC., Petitioner, -versus- **COMMISSIONER OF INTERNAL REVENUE,** Respondent.	**C.T.A. EB No. 462** **(C.T.A. CASE No. 6697)** **Present:** Acosta, *P.J.* Castañeda, Jr., Bautista, Uy, Casanova, Palanca-Enriquez, Fabon-Victorino, Mindaro-Grulla,and Cotangco-Manalastas, *JJ.* Promulgated: MAR 11 2010

DECISION

CASTAÑEDA, JR., *J.*:

For review before this Court are two (2) Petitions for Review filed by dissatisfied parties appealing the May 27, 2008 Decision and the January

19, 2009 Amended Decision rendered by the First Division[1] of the Court of Tax Appeals (Court in division) in the case entitled *"Samar-I Electric Cooperative, Inc. vs. Commissioner of Internal Revenue"* docketed as C.T.A. Case No. 6697. These petitions were consolidated by the Court *en banc* on February 26, 2009, thus, C.T.A. EB No. 462 was consolidated with C.T.A. EB No. 460, the case bearing the lower docket number.

The Petition for Review docketed as C.T.A. EB No. 460 was filed by the Commissioner of Internal Revenue ("CIR" for brevity/respondent, in the division case) on February 23, 2009. CIR prays that the May 27, 2008 Decision and the January 19, 2009 Amended Decision be reversed and set aside and a new one be rendered, ordering Samar-I Electric Cooperative, Inc. ("SAMELCO-I" for brevity/petitioner, in the division level) to pay the total amount of P440,545.71 as deficiency Income Tax for taxable years 1998 and 1999 and an additional amount of P3,760,225.69 representing withholding tax on compensation on taxable years 1997, 1998, and 1999, plus 25% surcharge for late payments and delinquency 20% annual interest from the date reflected in the FAN until fully paid pursuant to Sections 248 and 249 of the 1997 Tax Code, as amended. CIR further prays for other reliefs just and equitable under the circumstances.

[1] Penned by Presiding Justice Ernesto D. Acosta and concurred by Associate Justices Lovell R. Bautista and Caesar A. Casanova.

On the other hand, the Petition for Review docketed as C.T.A. EB No. 462 was filed by Samar-I Electric Cooperative, Inc. ("SAMELCO-I" for brevity/petitioner, in the division level) on February 26, 2009. SAMELCO-I prays that portions of the May 27, 2008 Decision and January 19, 2009 Amended Decision which found it liable to pay CIR an aggregate amount of P2,690,850.91 for 1997, 1998, and 1999 deficiency withholding tax, plus 20% delinquency interest computed from September 30, 2002 until fully paid, be set aside and cancelled for being bereft of legal and factual bases.

The dispositive portion of the assailed Decision provides, as follows:

> **WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, the 1998 to 1999 deficiency income tax assessment issued against petitioner in the amount of P440,545.71 is hereby **CANCELLED** and **WITHDRAWN.**
>
> On the other hand, petitioner is hereby **ORDERED TO PAY** respondent deficiency Withholding Tax on Compensation for taxable years 1997, 1998, and 1999 in the amount of P2,855,701.59, computed as follows

	1997	1998	1999	Total
Deficiency WT	P 522,253.85	P 419,960.06	P 493,081.60	P 1,435,296.41
Add: 25% Surcharge	130,563.46	104,990.24	123,270.40	358,824.10
Interest	488,599.81	308,906.48	264,074.78	1,061,581.07
Total Deficiency WT	P1,141,417.12	P 833,857.68	P 880,426.78	P 2,855,701.59

> In addition, petitioner is hereby **ORDERED TO PAY** respondent the twenty percent (20%) delinquency interest on the amount of P2,855,701.59 computed from September 30, 2002 until full payment, pursuant to Section 249(C) of the NIRC of 1997.
>
> **SO ORDERED.**

The dispositive portion of the assailed Amended Decision reads, as follows:

> **WHEREFORE,** respondent's *Motion for Partial Reconsideration* is hereby **DENIED** for lack of merit; while petitioner's *Motion for Reconsideration* is hereby **PARTIALLY GRANTED.** Accordingly, the dispositive portion of this Court's *Decision* promulgated on May 27, 2008 is hereby modified as follows:
>
> "**WHEREFORE,** the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, the 1998 to 1999 deficiency income tax assessment issued against petitioner in the amount of P440,545.71 is hereby **CANCELLED** and **WITHDRAWN.**
>
> On the other hand, petitioner is hereby **ORDERED TO PAY** respondent deficiency Withholding Tax on Compensation for taxable years 1997, 1998, and 1999 in the amount of P2,690,850.91, computed as follows:
>
> | | 1997 | 1998 | 1999 | Total |
> |---|---|---|---|---|
> | Deficiency WT | P 522,253.85 | P 338,336.88 | P 491,523.71 | P 1,352,114.44 |
> | Add: 25% Surcharge | 130,563.46 | 84,584.22 | 122,880.93 | 338,028.61 |
> | Interest | 488,599.81 | 248,867.61 | 263,240.44 | 1,000,707.86 |
> | Total Deficiency WT | P1,141,417.12 | P 671,788.71 | P 877,645.08 | P 2,690,850.91 |
>
> In addition, petitioner is hereby **ORDERED TO PAY** respondent the twenty percent (20%) delinquency interest on the amount of P2,690,850.91 computed from September 30, 2002 until full payment, pursuant to Section 249(C) of the NIRC of 1997.
>
> **SO ORDERED."**
>
> **SO ORDERED.**

The Facts

As found by the Court in Division, the following are the facts of this case:

> Samar-I Electric Cooperative, Inc. (Petitioner) is an electric cooperative, with principal office at Barangay Carayman, Calbayog City. It was issued a Certificate of Registration by the National Electrification Administration (NEA) on February 27, 1974, pursuant to Presidential Decree (PD) 269. Likewise, it was granted a Certificate of Provisional Registration under Republic Act (RA) 6938, otherwise known as the Cooperative Code of the Philippines on March 16, 1993, by the Cooperative Development Authority (CDA).

Respondent Commissioner of Internal Revenue is a public officer authorized under the National Internal Revenue Code (NIRC) to examine any taxpayer including *inter alia,* the power to issue tax assessment, evaluate, and decide upon protests relative thereto.

On July 13, 1999 and April 17, 2000, petitioner filed its 1998 and 1999 income tax returns, respectively. Petitioner filed its 1997, 1998, and 1999 Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding Taxes on February 17, 1998, February 1, 1999, and February 4, 2000, in that order.

On November 13, 2000, respondent issued a duly signed Letter of Authority (LOA) No. 1998 00023803; covering the examination of petitioner's books of account and other accounting records for income and withholding taxes for the period 1997 to 1999. The LOA was received by petitioner on November 14, 2000.

Petitioner cooperated in the audit and investigation conducted by the Special Investigation Division of the BIR by submitting the required documents on December 5, 2000.

On October 19, 2001, respondent sent a Notice for Informal Conference which was received by petitioner in November 2001; indicating the allegedly income and withholding tax liabilities of petitioner for 1997 to 1999. Attached to the letter is a summary of the report, with an explanation of the findings of the investigations.

In response, petitioner sent a letter dated November 26, 2001 to respondent maintaining its indifference to the latter's findings and requesting details of the assessment.

On December 13, 2001, petitioner executed a Waiver of the Defense of Prescription under the Statute of Limitations, good until March 29, 2002.

On February 27, 2002, a letter was sent by petitioner to respondent requesting a detailed computation of the alleged 1997, 1998 and 1999 deficiency withholding tax on compensation.

On February 28, 2002, respondent issued a Preliminary Assessment Notice (PAN). The PAN was received by petitioner on April 9, 2002, which was protested on April 18, 2002. Respondent's Reply dated May 27, 2002, contained the explanation of the legal basis of the issuance of the questioned tax assessments.

However, on July 8, 2002, respondent dismissed petitioner's protest and recommended the issuance of a Final Assessment Notice.

> Consequently, on September 15, 2002, petitioner received a demand letter and assessments notices (Final Assessment Notices) for the alleged 1997, 1998, and 1999 deficiency withholding tax in the amount of P3,760,225.69, as well as deficiency income tax covering the years 1998 to 1999 in the amount of P440,545.71, or in the aggregate amount of P4,200,771.40.
>
> Petitioner filed its protest and Supplemental Protest to the Final Assessment Notices on October 14, 2002 and November 4, 2002, respectively. But on the Final Decision on Disputed Assessment issued on April 10, 2003, petitioner was still held liable for the alleged tax liabilities.

On May 29, 2003, the Petition for Review was filed by SAMELCO-I with the Court in division.

On May 27, 2008, the assailed Decision partially granting SAMELCO-I's petition was promulgated.

Dissatisfied, both parties sought reconsideration of the said decision. CIR filed the "Motion for Partial Reconsideration (Re: Decision dated 27 May 2008" on June 13, 2008. On the other hand, SAMELCO-I's "Motion for Reconsideration" was filed on June 17, 2008.

On January 19, 2009, the Court in division promulgated its Amended Decision which denied CIR's motion and partially granted SAMELCO-I's motion.

Thereafter, CIR and SAMELCO-I filed their "Motion for Extension of Time to File Petition for Review" on February 6, 2009 and February 11, 2009, respectively. Both motions were granted by the Court.

Hence, these petitions for review docketed as C.T.A. EB No. 460 and C.T.A. EB No. 462 were filed on February 23, 2009 and February 26, 2009 by CIR and SAMELCO-I, respectively.

In C.T.A. EB 460, the following issues were raised by CIR:

I. WHETHER OR NOT SAMELCO-I IS ENTITLED TO TAX PRIVILEGES ACCORDED TO MEMBERS IN ACCORDANCE WITH REPUBLIC ACT NO. 6938, OR THE COOPERATIVE CODE, OR TO PRIVILEGES OF PRESIDENTIAL DECREE (PD) NO. 269.

II. WHETHER OR NOT SAMELCO-I IS LIABLE FOR THE MINIMUM CORPORATE INCOME TAX (MCIT) FOR TAXABLE YEARS 1998 TO 1999.

III. WHETHER OR NOT SAMELCO-I IS LIABLE TO PAY THE TOTAL DEFICIENCY EXPANDED WITHHOLDING TAX OF P3,760,225.69 FOR TAXABLE YEARS 1997 TO 1999.

In C.T.A. EB No. 462, the following legal and factual errors were raised by SAMELCO-I:

I. THE COURT IN DIVISION GRAVELY ERRED IN HOLDING THAT THE 1997 AND 1998 ASSESSMENTS ON WITHHOLDING TAX ON COMPENSATION (RECEIVED BY SAMELCO-I ON SEPTEMBER 15, 2002), HAVE NOT PRESCRIBED EVEN IF THE WAIVER VALIDLY EXECUTED WAS GOOD ONLY UNTIL MARCH 29, 2002.

II. THE COURT IN DIVISION ERRED IN HOLDING THAT CIR CAN VALIDLY ASSESS WITHIN THE TEN (10)-YEAR PRESCRIPTIVE PERIOD EVEN IF THE NOTICE OF INFORMAL CONFERENCE, PAN, FORMAL LETTER OF DEMAND, AND ASSESSMENT NOTICE MENTION NOT A WORD THAT THE BIR IS INVOKING SECTION 222 (a)

OF THE 1997 TAX CODE [then Sec. 223, NIRC], DUE TO ALLEGED FALSE WITHHOLDING TAX RETURNS FILED BY SALMECO-I AS THE SAME ASSERTIONS WERE MERE AFTERTHOUGHT TO JUSTIFY APPLICATION OF THE 10-YEAR PRESCRIPTIVE PERIOD TO ASSESS.

III. THE COURT IN DIVISION FAILED TO CONSIDER THAT CIR MADE NO FINDINGS AS TO SAMELCO-I'S FILING OF A FALSE RETURN AS CLEARLY MANIFESTED BY THE NON-IMPOSITION OF 50% SURCHARGE ON THE 1997, 1998 AND 1999 BASIC WITHHOLDING TAX DEFICIENCY IN THE PAN, DEMAND NOTICE AND EVEN IN THE ASSESSMENT NOTICE OTHER THAN INTEREST CHARGES.

IV. THE COURT IN DIVISION ERRED IN NOT HOLDING THAT GIVEN SAMELCO-I'S FILING OF ITS 1997, 1998, AND 1999 WITHHOLDING TAX RETURNS IN GOOD FAITH, AND IN CLOSE CONSULTATION WITH THE BIR PERSONNEL IN CALBAYOG CITY WHERE SAMELCO-I'S PLACE OF BUSINESS IS LOCATED, THE LATTER SHOULD NO LONGER BE IMPOSED THE INCREMENTAL PENALTIES (SURCHARGE AND INTEREST).

V. THE COURT IN DIVISION FAILED TO RULE THAT SINCE THERE WAS NO SUBSTANTIAL UNDER REMITTANCE OF 1998 WITHHOLDING TAX AS THE BASIC DEFICIENCY TAX PER AMENDED DECISION IS LESS THAN 30% OF THE COMPUTED TOTAL TAX DUE PER RETURN, SAMELCO-I DID NOT FILE A FALSE RETURN.

VI. THE COURT IN DIVISION OVERLOOKED THE FACT THAT FOR TAXABLE YEAR 1999, SAMELCO REMITTED THE AMOUNT OF P844,958.00 AS WITHHOLDING TAX IN COMPENSATION INSTEAD OF P786,702.43 AS INDICATED IN PAGE 8, ANNEX C OF THE CTA (1ST DIVISION) DECISION.

VII. THE COURT IN DIVISION ERRED IN FAILING TO DECLARE AS VOID BOTH THE FORMAL LETTER OF DEMAND AND ASSESSMENT NOTICE ON WITHHOLDING TAX ON COMPENSATION FOR 1997 TAXABLE YEAR, GIVEN ITS NON-COMPLIANCE WITH SECTION 3.1.4 OF RR 12-99.

On February 26, 2009, the Court *en banc* resolved to consolidate C.T.A. EB No. 462 with C.T.A. EB No. 460, the case bearing the lower docket number.

On March 23, 2009, both parties were ordered to file their Comment within ten (10) days from notice of the resolution and may file a reply within five (5) days from receipt of Comment.

On April 7, 2009, SAMELCO-I filed its Comment. On the same date, CIR filed a "Motion for Extension of Time to File Comment (to Petition for Review)" which was granted by this Court on April 13, 2009. On April 20, 2009, CIR filed his Comment (Re: Petition for Review dated February 25, 2009).

On May 5, 2009, these consolidated cases are deemed submitted for decision.

Hence, this decision.

Issues

In consolidating these petitions, the issues to be resolved are:

1. **Whether or not SAMELCO-I is liable to pay Minimum Corporate Income Tax (MCIT) for taxable years 1998 to 1999; and**

2. **Whether or not SAMELCO-I is liable to pay the 1997 to 1999 deficiency Withholding Tax on Compensation.**

This Court's Ruling

A careful reading of the issues and arguments raised by the parties reveal that these are mere reiterations of what have been considered and passed upon by the Court in division in the assailed Decision and the Amended Decision. Be that as it may, pertinent issues need to be emphasized.

SAMELCO-I is exempted in the payment of Minimum Corporate Income Tax

CIR alleges that SAMELCO-I , not being duly registered cooperative, is not entitled to tax privileges accorded to members in accordance with Republic Act No. 6938, or the Cooperative Code, nor it is entitled to the

privileges of Presidential Decree (PD) No. 269. CIR alleges that there is nothing in Republic Act No. 6938 that states in unequivocal term express repeal of EO No. 93, thus, SAMELCO-I is covered by Executive Order No. 93 and the Fiscal Incentive Review Board (FIRB) Resolution No. 024-87. EO 93 dated December 17, 1986 issued by then President Corazon C. Aquino has withdrawn, among others, the tax exemption and privileges granted to both government and private entities. Section 2 of the said EO authorized the Fiscal Incentive Review Board (FIRB), among others, to do the following: "(a) restore tax and/or duty exemptions withdrawn hereunder in whole or in part." Thus, pursuant to Section 2(a) of EO No. 93, FIRB issued Resolution No. 024-87 on July 14, 1987 with a proviso that "xxx the income from electric service operations xxx shall remain taxable xxx."

CIR alleges that SAMELCO-I is not one of the enumerated tax-exempt government-owned or controlled-corporations, agencies or instrumentalities in Section 27 (C) of the Tax code, hence, taxable.

CIR submits that SAMELCO-I, as a domestic corporation, is liable to pay income tax under Sections 27 (A) and (E) of the Tax Code. CIR alleges that SAMELCO-I is not one of the entities specifically exempt from the payment of MCIT nor did it show that it applied for the suspension from

the application of MCIT, hence, the MCIT assessment covering the taxable years 1998 to 1999 should be sustained.

The allegations of CIR are bereft of merit.

It is significant to note that "On March 10, 1990, Republic Act No. 6938, otherwise known as the *'Cooperative Code of the Philippines'* (Cooperative Code) was enacted and on February 4, 1994, the 'Omnibus Rules and Regulations on the Registration of Electric Cooperatives Under Republic Act No. 6938' was approved for the purpose of harmonizing the provisions of the Cooperative Code and PD 269"[3]. Likewise significant to consider is that "Pursuant to Section 2(a) of EO No. 93, FIRB issued Resolution No. 24-87 on July 14, 1987 **restoring the tax incentives** of electric cooperatives effective July 1, 1987, but their income from electric service operations xxx xxx remained taxable"[4]. Looking at the dates of the effectivity, We can see that the later date is the Cooperative Code. Because there is conflict between the FIRB Resolution and the Cooperative Code, it follows, therefore, that the Cooperative Code prevails. In addition, Resolution 24-87 is a mere resolution issued by a body created under the

3 Assailed Decision, p. 10.
4 *Id.*, p. 9.

Office of the President; while the Cooperative Code is a statute enacted by Congress, which is the body empowered to create laws.[5]

Article 127 of the Cooperative Code reads:

> ARTICLE 127. Repeals. — Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof, inconsistent with any provisions of this Code shall be deemed repealed: **Provided, however, That nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of Presidential Decree No. 269:** Provided, further, That the electric cooperatives which qualify as such under this Code shall fall under the coverage thereof. *(Emphasis Supplied)*

A plain reading of the above provision shows that PD 269 is not amended nor repealed by the enactment of the Cooperative Code. Thus, the exemption from paying taxes of electric cooperatives under Section 39 of PD 269 still applies, which reads:

> SECTION 39. Assistance to Cooperatives; Exemption from Taxes, Imposts, Duties, Fees; Assistance from the National Power Corporation. — Pursuant to the national policy declared in Section 2, the Congress hereby finds and declares that the following assistance to cooperative is necessary and appropriate:
> (a) Provided that it operates in conformity with the purposes and provisions of this Decree, **a cooperative (1) shall be permanently exempt from paying income taxes**, and (2) for a period ending on December 31; of the thirtieth full calendar year after the date of a cooperative's organization or conversion hereunder, or until it shall become completely free of indebtedness incurred by borrowing, whichever event first occurs, shall be exempt from the payment (a) of all National Government, local government and municipal taxes and fees, including franchise, filing, recordation, license or permit fees or taxes and any fees, charges, or costs involved in any court or administrative proceeding in which it may be a party, and (b) of all duties or imposts on foreign goods acquired for its operations, the period of such exemption for a new cooperative formed by consolidation, as provided for in Section 29, to begin from as of the date of the beginning of such period for the constituent consolidating cooperative which was most recently organized

[5] *Id., pp. 15-16.*

> or converted under this Decree: Provided, That the Board of Administrators shall, after consultation with the Bureau of Internal Revenue, promulgate rules and regulations for the proper implementation of the tax exemptions provided for in this Decree. *(Emphasis Supplied)*

We, thus, agree with the following findings of the Court in division as follows:

> In the case at bar, it is undisputed that petitioner is registered with NEA on February 27, 1974, pursuant to PD 269; and was issued a Certificate of Provisional Registration by the CDA on March 16, 1993. This Court agrees with respondent's position that the provisional registration of petitioner is good only for two years, pursuant to Section 4 of the "*Guidelines on the Provisional Registration of Electric Cooperatives with the CDA*"[6]. Obviously, the provisional registration of petitioner had already expired in 1995. However, the expiration of petitioner's provisional registration with the CDA is irrelevant to the issue on hand since **petitioner remained registered with NEA; thus, governed by the provisions of PD 269. This being the case, Section 39 of PD 269 clearly grants tax exemption to electric cooperatives, such as petitioner, from income tax. The Minimum Corporate Income Tax (MCIT) being an income tax; thus, petitioner is logically exempted from the payment of MCIT.** *(Emphasis Supplied)*

There is due process in the issuance of the assessments

SAMELCO-I alleges there was no due process because the Preliminary Assessment Notice (PAN), Final Demand Letter, and Assessment notice were silent as to its nature and basis in violation of Section 228[7] of the Tax Code, in relation to Section 3, par. 3.1.2[8] and Section 3.1.4[9] of Revenue Regulations No.12-99[10].

---

6 adopted on February 26, 1993.
7 Protesting of Assessment.

CIR argues that the assessments were issued in accordance with Section 228 of the Tax Code as well as Revenue Regulations No. 12-99 and 12-85[11]. CIR likewise avers that the PAN and the Final Assessment Notice (FAN) clearly indicated the specific provisions of the law which were made the bases for the issuance of the questioned assessments.

The Court in division correctly discussed in the assailed decision that due process was observed in the issuance of the assessments. We reiterate pertinent portion the assailed Decision as follows:

> A meticulous review of the records reveals that respondent complied with the requirement of due process as mandated by Section 228 of the NIRC of 1997. During the preliminary stage of the assessment, petitioner was already informed on how the deficiency taxes, being assessed against it, were arrived at. On October 19, 2001, prior to the conduct of an informal conference, respondent sent to petitioner a copy of his audit findings and investigations. Also, it was admitted by petitioner that the *Summary Report of Investigation of Income Tax, and Summary Report of Withholding Tax on compensation of petitioner for taxable years 1997-1999*[12] were attached to the Notice of Informal Conference issued by respondent to petitioner. On the same date that the PAN was issued, respondent per petitioner's request sent to the latter a letter showing the details of the computation.[13] Moreover, the PAN contained Details of Discrepancies where the law and the revenue regulation violated by petitioner are stated. The said Details are herein quoted as follows:
>
> "DETAILS OF DISCREPANCIES gv

8 Preliminary Assessment Notice (PAN).
9 Formal Letter of Demand and Assessment Notice.
10 SUBJECT : Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty.
11 SUBJECT: Procedure governing administrative protests of assessments of the Bureau of Internal Revenue.
12 Exhibits "6" and "7."
13 Exhibit "16."

1. Deficiency income taxes for 1998 and 1999 respectively result from non-payment of the minimum corporate income tax (MCIT) imposed pursuant to Section 27(E) of the 1997 Tax Reform Act.

2. Deficiency Withholding Taxes on Compensation for 1997-1999 are the total withholding taxes on compensation of all employees of SAMELCO I resulting from failure of employer to withhold taxes on the taxable 13th month pay and other benefits in excess of P30,000 threshold pursuant to Revenue Regulation 2-98."

With respect to the FAN, while it failed to lay down the specific provisions of the NIRC of 1997 or other internal revenue laws violated or as bases for the assessments; nevertheless, by indicating the kinds of tax to which petitioner is liable, such was already a sufficient compliance with the requirements of Section 228 of the NIRC of 1997.

Further, the phrase **"in writing"** in Section 228 does not merely refer to written words. "Writings" consist of letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation.[14] Indubitably, figures are also "writings" and if the figures itself are competent to enlighten the taxpayer of the basis of the assessment, then there is no reason why a FAN containing only mere figures should not be considered as adequate compliance with the law.

1997 and 1998 Assessments on deficiency withholding tax on compensation have not prescribed

In its petition, SAMELCO-I argues that the 1997 and 1998 deficiency withholding tax assessments have prescribed. SAMELCO-I avers that it was undisputed that it filed its 1997 and 1998 Annual Information Return of Income Tax Withheld on Compensation, Expanded and Final Withholding

[14] Blacks Law Dictionary 6th ed. page 1609.

Taxes on February 17, 1998 and February 1, 1999, respectively, and that the demand letter and assessment notices (Final Assessment Notices) for the alleged 1997, 1998 and 1999 deficiency withholding tax were on September 15, 2002. It submits that the assessment notices should have been issued within the timeframe as agreed upon in the Waiver or until March 29, 2002, following Section 222 (b) of the Tax Code.

On the other hand, CIR argues that the 1997 and 1998 Assessments on withholding tax on compensation were issued within the prescriptive period allowed by law (ten [10] years from date of discovery). CIR alleges that his witness was able to prove that the figures reflected in the withholding tax returns filed by SAMELCO-I were false.

We agree with CIR that the ten-year prescriptive period applies in this case because there is falsity. It is noteworthy to mention that during the trial, the witness for the CIR testified that SAMELCO-I did not file an accurate return[15], as follows:

> ATTY. FRANCIA:
> Q: Did the petitioner file an accurate Return?
> MS. RAPATAN:
> A: No.
> ATTY. FRANCIA:
> Q: Can you please explain?
> MS. RAPATAN:
> A: Because I based the computation of my deficiency withholding taxes on declared

[15] TSN, June 8, 2006, pp.33-34.

taxable income per alpha list submitted then, I have extracted a data from the Alpha List, particularly that of the Manager and other officials, only their basic salary and their overtime pay were declared but the other benefits were not actually subjected to withholding tax. So, the deficiency withholding taxes from the taxes on the taxable 13th month pay and other benefits in excess of the P12,000.00 for 1997 and for the taxable years 1998 and 1999, in excess of the P30,000.00. I also noticed that the per diem of the Manager was not included in the withholding tax computation of SAMELCO I.

ATTY. FRANCIA:

Nothing further, your Honors.

JUSTICE BAUTISTA:

Any re-cross?

ATTY. NAPUTO:

No, re-cross, your Honors.

The discussion of the Court in division as to the application of the ten-year prescriptive period is enlightening, as follows:

> However, this Court is mindful of the exceptions to the three-year prescriptive period which are found in Section 223(A) of the NIRC of 1977 and Section 222(a) of the NIRC of 1997. A perusal of said Sections would show that false return is one of the circumstances for the applicability of the ten-year prescriptive period. Pertinent portions thereof read:
>
> "**NIRC of 1977**
>
> **SEC. 223. Exceptions as to period of limitation of assessment and collection of taxes.**-(A) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time **within ten years after the discovery of the falsity,** fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof." (*Emphasis supplied*)

"**NIRC of 1997**

SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

(a) In the case of a **false** or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time **within ten (10) years after the discovery of the falsity**, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof." *(Emphasis supplied)*

In interpreting the above Sections, the Supreme Court in the case of **Aznar vs. Court of Tax Appeals and Collector of Internal Revenue**[16], expounded that:

"xxx. We believe that the proper and reasonable interpretation of said provision should be that in the three different cases of (1) false return, (2) fraudulent return with intent to evade tax, (3) failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the (1) falsity, (2) fraud, (3) omission. Our stand that the law should be interpreted to mean a separation of the three different situations of false return, fraudulent return with intent to evade tax, and failure to file a return is strengthened immeasurably by the last portion of the provision which segregates the situations into three different classes, namely 'falsity', 'fraud' and 'omission'. That there is a difference between '**false return**' and 'fraudulent return' cannot be denied. While the first merely implies **deviation from the truth, whether intentional or not**, the second implies intentional or deceitful entry with intent to evade the taxes due.

The ordinary period of prescription of 5 years (now 3 years) within which to assess tax liabilities under Sec. 331 (now Sec. 203) of the NIRC should be applicable to normal circumstances, but whenever the government is placed at a disadvantage so as to prevent its lawful agents from proper

16 G.R. No. L-20569, August 23, 1974.

> assessment of tax liabilities due to false returns, fraudulent return intended to evade payment of tax or failure to file returns, the period of ten years provided for in Sec. 332 (a) NIRC, from the time of the discovery of the falsity, fraud or omission even seems to be inadequate and should be the one enforced." (*Emphasis supplied*)

Apparently from the above pronouncement, intent to evade is immaterial in case of filing of false returns. As long as there is some deviation from the truth, whether it is due to mistake, ignorance or carelessness; falsity arises.

In the case at bar, the basis of the finding of falsity is the substantial underdeclaration of withholding taxes in the amount of **P2,855,701.59**[17].

While petitioner may have filed its returns in good faith, nonetheless, petitioner's returns failed to reflect the correct amount of tax. There is a deviation from the truth and it follows that the ten-year prescriptive period applies. The allegation of **"good faith"** is an irrelevant mechanism to escape the applicability of the ten-year prescriptive period.

As to 1997 and 1999 taxable years, it is undisputed that there is substantial under remittance of the withholding tax returns on compensation. Clearly, there is falsity in the returns pertaining to those taxable years. What is being questioned by SAMELCO-I is the 1998 withholding tax return as the deficiency is way below the 30% ceiling as provided in Section 248 (B) and in Section 4.2.1 of RR 12-99. In effect, SAMELCO-I alleges no falsity as to the 1998 withholding tax return.

We disagree.

[17] P2,690,850.91 in the Amended Decision.

It is noteworthy to mention that the Court in division followed the definition of false return in the case of *Aznar*[18] and ruled that there is deviation from the truth which makes it a false return. In addition, the 30% threshold on substantial underdeclaration under Section 248(B) of the Tax Code is but a mere *prima facie* presumption of the filing of a false or fraudulent return.[19]

As to the amount of the deficiency withholding taxes, We reiterate pertinent portions of the assailed Decision, as follows:

> For the alleged deficiency in withholding taxes on compensation for taxable year 1997, relevant is Section 3 of Revenue Regulations No. 2-95, which excludes from the computation of gross compensation income the 13th month pay and other benefits, to wit:
>
> > "**SECTION 3.** ***Benefits Exempted from Income Tax.*** - For purposes of determining the taxable compensation income, the following benefits shall be excluded from the gross compensation income, *viz:*
> >
> > (a) 13th month pay equivalent to the mandatory one (1) month basic salary of officials and employees of the Government (whether national or local), including government-owned and -controlled corporations, and of private offices received after the 12th month pay beginning CY 1994; and
> >
> > (b) Other benefits, such as, Christmas bonus given by private offices to their officials and employees, productivity incentive bonus, loyalty award, gifts in cash or in kind and other benefits of similar nature actually received by officials and employees of both Government and private offices in the amount not exceeding Twelve Thousand Pesos (P12,000.00) for one (1) calendar year. xxx"

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18 *Supra.*, Note 16.

19 *Holiday Inns (Phils.), Inc. vs. Commissioner of Internal Revenue*, C.A.-G.R. SP No.78828, September 9, 2004.

The above revenue regulation defines "other benefits" as "all benefits other than the 13th month pay, such as, the annual Christmas bonus given by private offices, 14th month pay, mid-year productivity incentive bonus, gifts in cash or in kind and other similar benefits received by an official or employee for one calendar year in amount not exceeding Twelve Thousand Pesos (P12,000.00) as maximum limit."[20] In other words, the non-taxable "other benefits" should not exceed P12,000.00 and when added to the 13th month pay, the total amount of tax-exempt benefit shall not exceed Thirty Thousand Pesos (P30,000.00).

Guided by the above rule, this Court once again thoroughly examined the evidence and record of the case and it appears that petitioner had deficiency withholding taxes amounting to P522,253.85.[21]

On the other hand, for taxable years 1998 and 1999, Revenue Regulations (RR) Nos. 2-98 and 3-98, provides that:

"REVENUE REGULATIONS NO. 02-98

Sec. 2.78.1 Withholding of Income Tax on Compensation Income.-

XXX XXX XXX

(3) Facilities and privileges of a relatively small value. - Ordinarily, facilities and privileges (such as entertainment, medical services, or so called 'courtesy' discounts on purchases), furnished or offered by an employer to his employees generally, are **not considered as compensation subject to withholding if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees.**

Where compensation is paid in property other than money, the employer shall make necessary arrangements to ensure that the amount of the tax required to be withheld is available for payment to the Commissioner.

XXX XXX XXX

(B) Exemptions from withholding tax on compensation – The following income payments are exempted from the requirement of withholding tax on compensation: gl

20 Section 2(e) RR No. 2-95.
21 Annex "A" of the assailed Decision.

xxx xxx xxx

(11) Thirteenth (13th) month pay and other benefits.–

(a) Thirteenth (13th) month pay equivalent to the mandatory one (1) month basic salary of officials and employees of the government (whether national or local), including government-owned or controlled corporations, and or private offices received after the twelfth (12th) month pay; and

(b) Other benefits such as Christmas bonus, productivity incentive bonus, loyalty award, gifts in cash or in kind and other benefits of similar nature actually received by officials and employees of both government and private offices.

The above stated exclusions (a) and (b) shall cover benefits paid or accrued during the year provided that the total amount shall not exceed thirty thousand pesos (P30,000.00) which may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering, among others, the effect on the same of the inflation rate at the end of the taxable year.

xxx xxx xxx"

"REVENUE REGULATIONS No. 3-98

SEC. 2.33. SPECIAL TREATMENT OF FRINGE BENEFITS

xxx xxx xxx

(C) *Fringe Benefits Not Subject to Fringe Benefits Tax* - In general, the fringe benefits tax shall not be imposed on the following fringe benefits:

xxx xxx xxx

The term 'DE MINIMIS' benefits which are exempt from the fringe benefit tax shall, in general, be limited to

facilities or privileges furnished or offered by an employer to his employees that are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees such as the following:

1) Monetized unused vacation leave credits of employees not exceeding ten (10) days during the year;

2) Medical cash allowance to dependents of employees not exceeding P750 per semester or P125 per month;

3) Rice subsidy of P350 per month granted by an employer to his employees;

4) Uniforms given to employees by the employer;

5) Medical benefits given to the employees by the employer;

6) Laundry allowance of P150 per month;

7) Employees achievement awards, e.g., for length of service or safety achievement, which must be in the form of a tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding one-half (1/2) month of the basic salary of the employee receiving the award under an established written plan which does not discriminate in favor of highly paid employees;

8) Christmas and major anniversary celebrations for employees and their guests;

9) Company picnics and sports tournaments in the Philippines and are participated exclusively by employees; and

10) Flowers, fruits, books, or similar items given to employees under special circumstances, e.g., on account of illness, marriage, birth of a baby, etc."

Pursuant to RR No. 2-98, facilities of relatively small value or the so called "De Minimis" benefits are not included in computing the

> compensation subject to withholding tax. Moreso, 13th month pay and other benefits are not subject to withholding tax provided they do not exceed P30,000.00. It follows that any benefits granted to employees beyond the P30,000.00 threshold shall be subject to withholding tax.
>
> On the other hand, RR No. 3-98 provides for the acceptable ceiling for *De Minimis*. Hence, applying it to the case at bar, only the (a) monetized unused vacation leave credits not exceeding 10 days; (b) rice subsidy not exceeding P4,200; (c) medical and dental allowances; and (d) uniform allowance during the year, being facilities or privileges categorized as *De Minimis* benefits, shall not be included in the computation of the P30,000.00 threshold for the determination of the items of income that are to be subjected to withholding tax on compensation.
>
> An examination of the records of the case would show that petitioner neglected its duty to withhold correct taxes from its employees for taxable years 1998 and 1999 on the taxable 13th month pay and other benefits in excess of the P30,000.00 threshold. For years 1998 and 1999, a deficiency withholding taxes on compensation in the amount of P415,960.96 and P493,081.60, respectively are found.[22]

After comparing the definition of *de minimis* benefits under RR 3-98 and facilities and privileges of relatively small value under RR 2-98, We agree with the finding of the Court in division that these provisions are similar, pertinent portion of the said Amended Decision provides:

> This Court is not barred from espousing the definition of *de minimis* benefits embodied under RR 3-98 to that of the "(f)acilities and privileges of a relatively small value" referred to under RR 2-98. This is so because of the following reasons:
>
> 1. RR 3-98 did not state that the definition therein of *de minimis* benefits shall be used exclusively for such revenue regulation;
>
> 2. RR 3-98 did not qualify the type of employees covered by such definition or characterization. It merely refers to them as "to (the employer's) employees". Thus, where the law does not distinguish, neither do we distinguish[23]; *ja*

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22 Annexes "B" and "C" of the assailed Decision.

23 *Colgate-Palmolive Phils., Inc.vs. Gimenez, et al.*, G.R. No. L-14787, January 28, 1961.

3. The provisions in question may be deemed *in pari materia*.[24] Thus, the rule of statutory construction dictates that they should be construed together;[25]

4. There is no substantial distinction between "facilities (and/or) privileges furnished and offered by an employer that are of relatively small value as a means of promoting the health, goodwill, contentment, or efficiency" enjoyed by the managerial or supervisory employees, and that of the rank and file. To make one would be violative of the equal protection clause of the 1987 Constitution;

5. It is emphatically the province and duty of the judicial department to say what the law is.[26] The fact that RR 2-98 did not provide a "ceiling" gives this Court much leeway in determining what constitutes "facilities or privileges (which) are ... (of) relatively small value".

"Xxx the withholding tax deficiency for 1999 and 1998 shall be reduced by P1,557.89 and P81,623.18, respectively,"[27] when the Court in Division found SAMELCO-I's Motion for Reconsideration partly meritorious based on Sections 2.79(A) of RR 2-98 and 79(A) of the NIRC of 1997. These provisions provide that there is no duty to withhold tax when the total compensation of an individual does not exceed the statutory minimum wage, or five thousand pesos (P5,000.00) per month, whichever is higher.

As regards taxable year 1999, the amount of P786,702.43 (page 8, Annex C, assailed Decision of the First Division) was considered as the

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24 Statutes are said to be *in pari materia* when they relate to the same person or thing, or to the same class of persons or things, or have the same purpose or object (*City of Naga, et al. vs. Agna, et al.*, G.R. No. L-36049, May 31, 1976).

25 *City of Naga, et al. vs. Agna, et al., supra.*

26 *San Miguel Corporation vs. Avelino, et al.*, G.R. No. L-39699, March 14, 1979.

27 Amended Decision of this case, p.7.

the remitted amount per alpha list which shows the details of the benefits given to the employees.

The argument of SAMELCO-I that there is good faith in the computation of taxes withheld and withholding tax returns because as testified by its witness, it allegedly followed the advice made by the BIR Officer assigned in Calbayog City (the same place where the SAMELCO-I's principal office is based), who was consulted on the matter does not merit.

The settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest.[28]

In this case, good faith is not based on the previous interpretation of government agencies tasked to implement the law but rather on the alleged advice of a BIR officer. Thus, surcharge and interest are properly imposed on the assessment.

As to the allegation of SAMELCO-I that CIR made no factual findings that the returns were false or fraudulent for if it were so, a 50% surcharge would have been imposed on top of the basic tax deficiency in the

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28 *Michel J. Lhuillier Pawnshops, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166786, Resolution dated September 11, 2006 citing the case of *Connel Bros. Co. Phil. Vs. Collector of Internal Revenue*, 119 Phil. 40, 46, (1963).

committed mistakes in making entries in the returns and in the assessment, respectively, under the inventory method of determining tax liability, it would be unfair to treat the mistakes of the petitioner as tainted with fraud and those of the respondent as made in good faith.

We conclude that the 50% surcharge as fraud penalty authorized under Section 72 of the Tax Code should not be imposed. *(Emphasis Supplied)*

Based on the foregoing discussions, We find no reversible error to disturb the Assailed Decision and the Amended Decision of the Court in division.

WHEREFORE, premises considered, We deny the petitions for lack of merit. Accordingly, We **AFFIRM** the May 27, 2008 Decision and the January 19, 2009 Amended Decision promulgated by the First Division of this Court.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice