

**ESCUDERO ELECTRIC SERVICE COMPANY, PETITIONER, VS.
BENJAMIN N. TABIOS, IN HIS CAPACITY AS COMMISSIONER OF
INTERNAL REVENUE, RESPONDENT.***G.R. No. L-23014. June 30, 1970*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/40c076f39510/>

MAKALINTAL, J.:

This is a review of the decision of the Court of Tax Appeals in its Case No. 1226.

Pursuant to Act No. 667, as amended, the Escudero Electric Service was granted municipal franchises to operate and maintain electric light, heat and power systems by the municipal council of Candelaria, Quezon, under Resolution No. 61, dated June 7, 1928 and by the municipal council of Calauan, Laguna under Resolution No. 11, dated March 19, 1929. The franchise for Candelaria fixed the rate of franchise tax at "uno por ciento de los ingresos brutos que obtenga por dicho privilegio durante los primeros veinte (20) años y el dos por ciento (2%) de los mismos ingresos durante los quince años restantes de la vigencia de este mismo privilegio." As to the franchise of Calauan, since no copy thereof was presented in evidence, the tax court presumed that the rate of franchise tax prescribed therein was 2%, as it was the rate being paid by the petitioner.

On November 2, 1960 the respondent assessed against the petitioner deficiency franchise tax and surcharge in the sum of P20,228.33 for the period from January 1, 1948 to June 30, 1959, computed as follows:

Gross receipts per audit P873,691.86

5% tax due thereon 43,684.59

Less: Amount already paid 27,501.93

Balance: P 16,182.66

Add: 25% surcharge 4,045.67

TOTAL AMOUNT DUE P 20,228.33

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All billings made by the petitioner, regardless of whether paid or not, were made subject to the franchise tax. According to the respondent, the tax of 5% on the gross receipts, as well as the 25% surcharge on the deficiency, was imposed in accordance with Section 259 of the National Internal Revenue Code, as amended.

The petitioner, through its counsel, protested the assessment and requested for its withdrawal and cancellation on the following grounds, namely: (1) that the right to assess the alleged deficiency tax for the period from January 1, 1948 to September 30, 1955 had already prescribed; (2) that the 2% tax prescribed in its franchise prevailed over the 5% tax provided for in Section 259 of the National Internal Revenue Code, as amended; and (3) that the uncollected revenues do not constitute part of the taxable gross receipts or earnings. In his letter dated February 14, 1961, the respondent denied the request for lack of legal basis. Thereupon, the petitioner filed with the Court

of Tax Appeals a petition for review of the respondent's decision.

After proper proceedings, the tax court rendered its decision dated December 26, 1963, the dispositive portion of which reads:

"In resume, we are of the opinion that the right of the Government to assess the deficiency franchise tax against petitioner covering the period from January 1, 1948 to September 30, 1955 has already prescribed. With respect to the deficiency franchise tax and surcharge covering the period from October 1, 1955 to June 30, 1959 in the sum of P15,772.91 (P12,618.33 deficiency tax plus P3,154.58 as 25% surcharge), the decision of respondent is hereby affirmed.

"IN VIEW OF THE FOREGOING, petitioner is hereby ordered to pay the sum of P15,772.91 within thirty days from the date this decision becomes final, without pronouncement as to costs."

Unable to secure a reconsideration of the adverse portion of the decision, the petitioner instituted the instant petition for review.

The first issue to be resolved in this case is whether or not the provisions of petitioner's municipal franchises regarding the rate of tax have been amended by Section 259 of the Tax Code, as amended by Republic Acts Nos. 39 and 418, which reads:

"SEC. 259. Tax on corporate franchises.- There shall be collected in respect to all existing and future franchises, upon the gross earnings or receipts from the business covered by the law granting the franchise a tax of five per centum or such taxes, charges, and percentages as are specified in the special charters of the grantees upon whom such franchises are conferred, whichever is higher, unless the provisions thereof preclude the imposition of a higher tax. For the purpose of facilitating the assessment of this tax, reports shall be made by the respective holders of the franchises in such form and at such times, as shall be required by the regulations of the Department of Finance.

"The taxes, charges, and percentages on corporate franchises, shall be due and payable as specified in the particular franchise or in case no time limit is specified therein, the provisions of section one hundred and eight-three shall apply; and if such taxes, charges, and percentages remain unpaid for fifteen days from and after the date on which they must be paid, twenty-five per centum shall be added to the amount of such taxes, charges, and percentages, which increase shall form part of the tax."

In at least four cases^[1] similar to the present case, where the franchises were issued by the municipal councils also pursuant to Act No. 667, this Court has held that the aforementioned section of the tax code amended the pertinent provisions of the municipal franchises. In *Balanga Power Plant Co. vs. Commissioner of Internal Revenue*, this Court said:

"At the outset, it should be noted the status of petitioner's municipal franchises as property and property right is dependent upon or qualified by the nature and limitations of the authority under which said franchises were granted by the municipal corporations concerned. Admittedly, such authority, as regards the franchises for Balanga and Samal, emanated from Act No. 667, pursuant to which franchises granted thereunder shall be 'subject to the power of Congress to alter, modify or repeal the same.' To the extent that Section 259 of our National Internal Revenue Code is inconsistent with the rate of taxes fixed in said municipal franchises - and the theory that Section 259 as applied to petitioner herein is unconstitutional, necessarily implies such inconsistency - it is obvious that, for all intents and purposes, said legal provision alters the pertinent provisions of said franchises. In effecting such alteration, our legislative department has merely exercised, however, a power expressly reserved thereto by said franchises, and has acted, therefore, in conformity, therewith, not in violation of the provisions thereof or to the detriment of the rights thereby vested in petitioner herein. x x x"

We now come to the question as to whether the un-collected amounts due from petitioner's customers should be excluded in computing the franchise tax. In upholding the assessment made by the respondent wherein the franchise tax payable by the petitioner was based on gross receipts, whether collected or not, the tax court relied on the case of *Philippine Long Distance Telephone Company vs. Collector of Internal Revenue*.^[2] In that case this Court construed "gross receipts" to mean "gross earnings," thereby subjecting the uncollected revenues to the tax. Thus:

"x x x. "Receipts" means amount actually received, for otherwise they would not be receipts. If the words of the franchise were to be construed in their literal sense, independently of the organic act or the Constitution, the theory of the plaintiff-appellant may be plausible; but it should be noted that the Philippine Legislature granted the franchises through Acts Nos. 1368 and 3436 under the authority vested in it by Section 74 of the Philippine Bill of 1902, the first organic act, and by Section 28 of the Jones Law, x x x.

"The acts of the Legislature granting the franchises should be construed so as not to contravene or violate the organic acts above mentioned, for otherwise said legislative acts would be null and void or unconstitutional. The organic acts use the word 'earnings.' A person may have earned his salary but may not have collected it, or may be unable to collect it from an insolvent employer. A person cannot demand payment of his unpaid salary unless he has earned it. This would show that to collect is a different act from to earn. Consequently, the uncollected "gross receipts" which should be construed as meaning the same thing as "gross earnings" should be subject to the franchise tax."

Indeed, Section 259 of the National Internal Revenue Code, as amended by Republic Acts Nos. 39 and 418, uses the term "gross earnings or receipts," so thus that "gross receipts" as so used has the same meaning as "gross earnings." Accordingly, the uncollected charges or amounts due from the petitioner's customers should be considered part of the taxable "gross earnings or receipts."

With respect to the imposition of 25% surcharge on the deficiency, this Court in *Imus Electric Co., Inc. vs. Court of Tax Appeals*, *supra*, and *Guagua Electric Light Co. Inc., vs. Collector of Internal Revenue* *supra*, ruled that when the taxpayer acted in good faith in paying the franchise tax at the lower rate fixed by its franchise, the surcharge may be dispensed with. In the instant case, the delay in the payment of the deficiency tax was due to the erroneous view of the petitioner that its franchises had not been amended by Section 259 of the National Internal Revenue Code. Since it appears that at one time or another the office of the respondent also shared the view of the petitioner to the extent of making refunds to franchise holders who had paid at the rate of 5% as in the *aforecited* cases, it would not be fair to impose on the herein petitioner the 25% surcharge. Evidently it was only after our decision in the two cases of *Hoa Hin Co., vs. David*, G. R. Nos. L-9616 and L-11783, May 25, 1959, wherein we held Section 259 of the Tax Code to be applicable, that the Bureau of Internal Revenue defined its stand accordingly and started assessing municipal franchise taxes at 5% instead of at the lower rates stated in the corresponding franchises. In the present case the assessment of the deficiency taxes, made on November 2, 1960 covered a period up to June 30, 1959 only; and it cannot therefore be said that the petitioner had been paying before then at the lower rate of 2% with knowledge that its payments were deficient. Our ruling with respect to the surcharge in the *Imus* and *Guagua* cases should apply herein.

Wherefore, modified by eliminating the 25% surcharge on the amount of P3,154.58, the decision appealed from is hereby affirmed. No pronouncement as to costs.

Reyes, J.B.L., Dizon, Zaldivar, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

Concepcion, C.J., took no part.

Villamor, J., on leave.

[1] Balanga Power Plant Co. vs. Commissioner of Internal Revenue, G. R. No. L-20499, June 30, 1965; Imus Electric Co., Inc. vs. Court of Tax Appeals, G. R. No. L-22421, March 28, 1967; Guagua Electric Light Co., Inc. vs. Collector of Internal Revenue, G. R. No. L-23611, April 24, 1967; Com. of Internal Revenue vs. Ilagan Electric & Ice Plant Inc., L-23081 Sept. 30, 1969, 29 SCRA 634.

[2] 90 Phil. 676.

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