



2. Resolution<sup>3</sup> dated April 15, 2015, denying the motion for reconsideration of petitioner Commissioner of Internal Revenue (CIR).

### **Antecedents**

Respondent BCDA was the owner of four (4) real properties in Bonifacio Global City, Taguig City which had a total area of 12,036 sq. m.. The lots were collectively referred to as the "Expanded Big Delta Lots." It entered into a contract to sell with the "Net Group," an unincorporated joint venture composed of four (4) corporations: (1) 18-14 Property Holdings, Incorporated; (2) 14-8b Property Holdings, Inc.; (3) The Net Group Project Management Corporation; and (4) The Net Group Property Management Corporation. The total purchase price was Php2,032,749,327.96. The "Net Group" committed *not* to remit to the Bureau of Internal Revenue (BIR) the total amount of Php101,637,466.40 as Creditable Tax Withheld at source (CWT) to give time to respondent to present a certification of tax exemption on or before June 9, 2008.

On May 28, 2008, respondent sought from petitioner the aforesaid certification but the CIR did not respond.

On July 31 2008, respondent and the "Net Group" executed the corresponding Deeds of Absolute Sale. In view of respondent's failure to present a certification of tax exemption, the "Net Group" deducted the amount of Php101,637,466.40 as CWT and issued to respondent the corresponding certificates of creditable tax withheld at source.<sup>4</sup> The "Net Group" remitted the amount to the BIR Regional District Office No. 44.

On March 9, 2009, respondent wrote the BIR for refund of the amount but, again, petitioner did not respond.

On July 29, 2010, respondent sought affirmative relief from the CTA, specifically for refund of the amount in question. Respondent claimed that it was exempt from all taxes and fees arising from or in relation to the sale, as provided under its charter, Republic Act (RA) 7227, as amended by RA 7917.

In its answer, petitioner countered that respondent failed to support its claim for tax refund. In particular, respondent allegedly failed to show, by competent evidence, that the CWT was erroneously or illegally withheld. Respondent's claim for tax refund purportedly did not comply with the procedural requirements. Besides, all taxes paid to the BIR are presumed lawful and proper.

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<sup>3</sup> *Id.* at 140-144.

<sup>4</sup> BIR Form No. 2307.



### **Ruling of the CTA First Division**

In its Decision dated September 13, 2013, the CTA First Division ruled in respondent's favor, *viz.*:

WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. Accordingly, respondent Commissioner of Internal Revenue is ORDERED to REFUND in favor of petitioner BASES CONVERSION DEVELOPMENT AUTHORITY the amount of P101,637,466.40, representing creditable withholding tax paid on July 31, 2008 in connection with the sale/disposition of the 12,036 square-meter property, otherwise known as the "Expanded Big Delta Lots", located in Fort Bonifacio, Taguig City.

SO ORDERED.<sup>5</sup>

Petitioner's subsequent motion for reconsideration was denied under Resolution dated January 30, 2014.

On the CIR's petition for review,<sup>6</sup> the CTA En Banc affirmed under Decision dated December 16, 2014. It also denied petitioner's motion for reconsideration under Resolution dated April 15, 2015.

The CTA En Banc ruled that while respondent is, indeed, not among the exempt corporations listed under Section 27 (C) of the 1997 National Internal Revenue Code<sup>7</sup> (NIRC) or RA 8424, as amended by RA 9337 and RA 10026, nevertheless, insofar as the sale of the "Expanded Big Delta Lots" is concerned, RA 7227, as amended by RA 7917 specifically exempts respondent from taxes. While the NIRC and its amending statutes were only promulgated after respondent was established, RA 7227, as amended is a special law. The NIRC, being a general law, is not deemed to have amended or superseded the special law in the absence of an express repeal thereof in the NIRC itself.

Additionally, Section 32(B) (7) (b) of the NIRC excludes from gross income and exempts from income tax, "the income derived from any public utility or from the exercise of any essential governmental functions accruing to the Government of the Philippines or to any political subdivisions." Section 2.57.5 of Revenue Regulations No. 2-98 likewise provides that "withholding of CWT should not apply to income payments made to national Government and its instrumentalities."

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<sup>5</sup> *Rollo*, p. 29

<sup>6</sup> CTA Case No. 8140.

<sup>7</sup> Section 27.C Government-owned or Controlled-Corporations, Agencies or Instrumentalities – The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the Philippine Charity Sweepstakes Office (PCSO) and the Philippine Amusement and Gaming Corporation (PAGCOR), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.

The CTA further ruled that the sale proceeds of the subject properties are excluded from respondent’s gross income pursuant Section 32 of the NIRC. Also, Section 2.57.5 of Revenue Regulation No. 2-98,<sup>8</sup> the creditable withholding tax system does not apply to the National Government and its instrumentalities.

Finally, the CTA En Banc upheld the tax-exempt provision in respondent’s Charter. It ordained:

x x x                      x x x                      x x x

x x x petitioner’s reliance in the cases of Philam Asset Management, Inc. v. Commissioner of Internal Revenue, United International Pictures AB v. Commissioner of Internal Revenue and Asiaworld Properties Phil. Corp v. Commissioner of Internal Revenue, is misplaced. It is noteworthy that the petitioner-taxpayers in these cases do not have a tax-exempt provision on its transaction that is akin to respondent’s charter.<sup>9</sup>

**The Present Petition**

Petitioner now urges this Court to nullify the CTA En Banc’s Decision dated December 16, 2014 and Resolution dated April 15, 2015. Petitioner reiterates that respondent is not exempt from CWT. But even assuming it is, respondent’s failure to comply with the requirements for tax refund negates its entitlement to such refund. Petitioner argues, in the main:

1. RA 7227, as amended by RA 7917 was *supplanted* by the NIRC specifically its Section 27(c). The NIRC got enacted in 1997 and took effect on January 1, 1998. In case of conflict, a later law prevails over an earlier law.

2. In claiming for tax refund, respondent did not comply with Section 10 of Revenue Regulation No. 6-85<sup>10</sup> requiring that the income which was supposedly taxed must be shown to have been included in the gross income. It must also be proved that the tax was in fact withheld at source.

<sup>8</sup> Revenue Regulation No 2-98, Section 2.57.5: Exemption from Withholding. – The withholding of creditable withholding tax prescribed in these Regulations shall not apply to income payments made to the following:

(A) National government and its instrumentalities, including provincial, city or municipal governments;

x x x                      x x x                      x x x

<sup>9</sup> *Rollo*, p. 137

<sup>10</sup> Section 10. Claims for credit or tax refund – Claims for tax credit or refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee (BIR Form No. 1743.1) showing the amount paid and the amount of tax withheld therefrom.

Petitioner cites *Commissioner of Internal Revenue v. Far East Bank and Trust Company*<sup>11</sup> where the claim for refund was denied for failure of therein respondent to present the Certificates of Creditable Tax Withheld at source.

Additionally, petitioner asserts that respondent's Annual Income Tax Return, copies of the Deeds of Absolute Sale, BIR payment Forms 0605, BIR Tax Payment Deposit Slips, and Certificates of Creditable Withholding Tax do not sufficiently establish that the income from the sale of the subject properties is part of the gross income.

3. Respondent failed to indicate in its income tax return whether it was availing of a tax credit or a tax refund. Since *respondent carried over the 2008 excess credit, then this "carry over" should also apply to the CWT that was withheld from the sale of the properties. When "carry over" is availed of, the option for refund is no longer available.*

In its Comment, respondent ripostes: Section 8 of RA 7227 as amended by RA 7917 provides that the proceeds from [respondent's] sale of government lands and other properties are exempt from all forms of taxes and fees. Further, Administrative Order (AO) 236 has declared that (a) the proceeds from the sale of government lands and other properties pursuant to RA 7227, as amended, are government funds and shall be remitted to the National Treasury and shall accrue to the General Fund of the Government and (b) the funds are automatically appropriated for the budget requirement of the several beneficiary-agencies identified under RA 7917.

Respondent further calls attention to paragraph (d), Section 8 of RA 7227, as amended by RA 7917.<sup>12</sup> The provision commands that respondent's Global City properties shall be sold and the sale proceeds shall not be diminished. Respondent asserts that this provisions signifies that such sales are not subject to any taxes or fees.

<sup>11</sup> 629 Phil. 405, 412, 417-418 (2010), citing *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, 548 Phil. 32, 39-42 (2007).

<sup>12</sup> Section 1. Paragraph (d), Section 8 of Republic Act No. 7227: x x x (d) A proposed 30.15 hectares as relocation site for families to be affected by circumferential road 5 and radial road 4 construction: Provided further, That the boundaries and technical descriptions of these exempt areas shall be determined by an actual ground survey.

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable, pursuant to the provisions of existing laws and regulations governing sales of government properties: Provided, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4 of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. The proceeds from any sale, after deducting all expenses related to the sale of portions of Metro Manila military camps as authorized under this Act, shall be deemed appropriated for the purposes herein provided for the following purposes with their corresponding percent shares of proceeds: xxx

The provisions of law to the contrary notwithstanding, the proceeds of the sale thereof shall not be diminished and, therefor, exempt from all forms of taxes and fees.

Respondent avers that RA 7227, as amended, a special law, was not deemed superseded by the NIRC, a general law. On this score, respondent cites *Lichauco & Company, Inc. v. Apostol*,<sup>13</sup> *Fajardo v. Villafuerte*,<sup>14</sup> *De Villa v. Court of Appeals*,<sup>15</sup> and *Commissioner of Internal Revenue v. Court of Tax Appeals*.<sup>16</sup>

Too, respondent posits that the income from the sale of the Expanded Big Delta Lots was not included in its 2008 Income Tax Return precisely because the sale was excluded from its gross income per Section 8 of RA 7227, as amended. The sale proceeds are in the nature of a special appropriation because their disposition has already been determined by RA 7227, as amended. Thus, the use of the disposition proceeds for purposes other than that for which they were specifically intended violates not only RA 7227 but also the Constitution.

### Core Issue

Is the BCDA exempt from Creditable Withholding Tax (CWT) on the sale of its Global City properties?

### Ruling

The affirmative answer is found in Section 8 of RA 7227, as amended by RA 7917, otherwise known as the Bases Conversion and Development Act of 1992, *viz.*:

SECTION 8. Funding Scheme. — The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands covered by Proclamation No. 423, series of 1957, commonly known as Fort Bonifacio and Villamor (Nicholas) Air Base, namely:

Camp	Area in has. (more or less)
x x x	x x x
x x x	x x x

The President is hereby authorized to sell the above lands, in whole or in part, which are hereby declared alienable and disposable, pursuant to the provisions of existing laws and regulations governing sales of government properties: Provided, That no sale or disposition of such lands will be undertaken until a development plan embodying projects for conversion shall be approved by the President in accordance with paragraph (b), Section 4, of this Act. However, six (6) months after approval of this Act, the President shall authorize the Conversion Authority to dispose of

<sup>13</sup> 44 Phil. 138 (1922).

<sup>14</sup> G.R. No. 89135, December 21, 1989, as cited by petitioner, see *rollo*, p. 173.

<sup>15</sup> G.R. No. 87416, April 8, 1991, 195 SCRA 722, as cited by petitioner, see *rollo*, p. 174.

<sup>16</sup> G.R. No. 44007, March 20, 1991, 195 SCRA 444.

certain areas in Fort Bonifacio and Villamor as the latter so determines. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. **The proceeds from any sale, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, shall be deemed appropriated for the purposes herein provided for the following purposes with their corresponding percent shares of proceeds:**

(1) Thirty-five percent (35%) — To primarily finance the self-reliance and modernization program of the AFP, the transfer of the AFP military camps and the construction of new camps and the rehabilitation and expansion of the AFP's medical facilities, and the modernization of the government arsenal;

(2) Twenty-seven and a half percent (27.5%) — To finance the construction and upgrading of infrastructure such as highways, railways and other transport facilities to make Subic, Clark and other former bases accessible: Provided, That other public works, utilities and irrigation projects not specified herein shall be included: Provided, further, That the conversion into commercial uses of the former military baselands proper and their extensions shall be undertaken as much as practicable through the Build-Operate-Transfer (BOT) scheme or financed by locator enterprises: Provided, finally, That this appropriation shall be retained by the Conversion Authority as part of its paid-up capital, pursuant to Section 6 of this Act;

(3) Twelve Percent (12%) — To finance the National Shelter Program: Provided, That fifty percent (50%) thereof, shall be used to finance mass social housing project for the underprivileged and homeless citizens of the country and the other fifty percent (50%) to concessional and long-term housing loan assistance for the homeless of Metro Manila, Olongapo City, Angeles City and other affected municipalities contiguous to the base areas;

(4) Three percent (3%) — To finance the National Health Insurance Program;

(5) Five percent (5%) — To finance critical infrastructure projects not covered by the Build-Operate-Transfer (BOT) program in areas surrounding the former base lands;

(6) Two percent (2%) — To finance the benefits/claims of Military War Veterans and their dependents under Republic Act No. 7696;

(7) One percent (1%) — As contribution for the Higher Education Development Fund under Section 10 of Republic Act No. 7722, otherwise known as the Higher Education Act of 1994, the amount of Five hundred million pesos (P500,000,000) or so much thereof, and the balance to finance [students'] scholarship, faculty development and the improvement of physical plants of colleges and universities under the Commission on Higher Education (CHED);

(8) Two percent (2%) — To finance the science and technology scholarships and training of thousands of young Filipino scientists and students in selected countries to be identified by the Department of Science and Technology; and the Study Now Pay Later Program for poor but deserving youths who shall enrol or are enrolled in science and technology (S&T) courses which will propel the country to achieve modernization and competitive excellence in the 21st century: Provided, That at least one (1) scholar/trainee shall be selected from each municipality/city of the country: Provided, further, That they shall render service to the Government for at least three (3) years or shall engage in S&T entrepreneurial activities within the country;

(9) One percent (1%) — To finance the multi-year program of the prosecution service;

(10) Two percent (2%), but in no case exceeding Two billion pesos (P2,000,000,000) — To finance a multi-year modernization program of the National Bureau of Investigation (NBI), the Philippine National Police (PNP) and improvement of prison facilities.

Provided, That seventy percent (70%) of this appropriations shall be used for capital outlay and thirty percent (30%) for training programs and early retirement schemes for their officers and personnel.

(11) One percent (1%), but in no case to exceed One billion pesos (P1,000,000,000) — To finance a multi-year judicial reform program;

(12) Two percent (2%) to finance the establishment of pre-school and daycare centers nationwide;

(13) One-half percent (1/2%) but not to exceed Five hundred million pesos (P500,000,000) for the summer program for the education of students (SPES) in accordance with Republic Act No. 7323;

(14) One percent (1%) for the construction of Senior Citizens Centers as provided under Republic Act No. 7876;

(15) Three percent (3%) to the emergency and contingent needs of the areas devastated by the Mount Pinatubo eruptions;

(16) Two percent (2%) for infrastructure development of future special economic zones to be created;

Approximately forty hectares (40 has.) of land in Fort Bonifacio, Phase I, shall be retained as a national government and local government centers, sports facilities and parks: Provided, That, in the case of Fort Bonifacio, two and five-tenths percent (2.5%) of the proceeds thereof in equal shares shall each go to the Municipalities of Makati, Taguig and Pateros: Provided, further, That in no case shall farmers affected be denied due compensation.



**The provisions of law to the contrary notwithstanding, the proceeds of the sale thereof shall not be diminished and, therefore, exempt from all forms of taxes and fees.** (Emphasis supplied)

Section 8 is two (2) pronged. The first commands that the sale proceeds of certain properties in Fort Bonifacio and Villamor (Nicholas) Air Base are **deemed appropriated by Congress** to each of the aforementioned recipients and for the respective purposes specified therein. Consequently, the sale proceeds are not BCDA income but **public funds subject to the distribution scheme and purposes provided in the law itself**. Book VI, Chapter 5, Section 32 of the Administrative Code of 1987 directs that “[a]ll monies appropriated for functions, activities, projects and programs shall be available solely for the specific purposes for which these are appropriated.” The second expressly enjoins that the **proceeds of the sale shall not be diminished** by any item or circumstance, including **all forms of taxes and fees**, to wit:

The provisions of law to the contrary notwithstanding, the proceeds of the sale thereof shall not be diminished and, therefore, exempt from all forms of taxes and fees

The provision is self-explanatory.

The Court has invariably ruled that when the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.<sup>17</sup> In *Bloomberry Resorts and Hotels, Inc., v. Bureau of Internal Revenue*,<sup>18</sup> the Court clarified that petitioner remained exempt from payment of corporate income tax on its gaming revenues since the PAGCOR Charter or Presidential Decree No. 1869<sup>19</sup> explicitly provides tax exemption for persons or entities contracting with PAGCOR relative to casino operations.

The CIR, nonetheless, argues against the application of Section 8 here because the same had been purportedly repealed by Section 27 of the NIRC, as amended:

SECTION 27. Rates of Income Tax on Domestic Corporations. —

x x x

x x x

x x x

- C) Government-owned or Controlled Corporations, Agencies or Instrumentalities. — The provisions of existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government, except the Government Service Insurance System (GSIS), the Social

<sup>17</sup> *Bloomberry Resorts and Hotels, Inc., v. Bureau of Internal Revenue*, 792 Phil. 751, 767 (2016).

<sup>18</sup> *Id.* at 767-768.

<sup>19</sup> As amended by Republic Act No. 9487 also known as “An Act Further Amending Presidential Decree No. 1869, Otherwise Known as PAGCOR Charter,” duly approved on 20 June 2007.

Security System (SSS), the Philippine Health Insurance Corporation (PHIC), the local water districts (LWDs), and the Philippine Charity Sweepstakes Office (PCSO), shall pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity.

The argument does not persuade. We agree with the CTA-En Banc that Section 27 is a general law while Section 8 of RA 7227, as amended by RA 7917 is a special law. As a rule, a general law cannot impliedly repeal a special law. *Commissioner of Internal Revenue v. Semirara Mining Corporation*<sup>20</sup> is apropos:

As regards the claim of petitioner that respondent SMC's VAT exemption has already been repealed, this Court affirms the CTA decision that respondent SMC's VAT exemption remains intact. R.A. No. 9337's amendment of the NIRC did not remove the VAT exemption of respondent SMC x x x

x x x                      x x x                      x x x

x x x [T]his Court had the occasion to discuss in depth the reasons why PD No. 972 cannot be impliedly repealed by the repealing clause of R.A. No. 9337, a general law, to wit:

It is a fundamental rule in statutory construction that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect. A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion. The repealing clause of RA No. 9337, a general law, did not provide for the express repeal of PD No. 972, a special law x x x

x x x                      x x x                      x x x

x x x Had Congress intended to withdraw or revoke the tax exemptions under PD No. 972, it would have explicitly mentioned Section 16 of PD No. 972, in the same way that it specifically mentioned Section 13 of RA No. 6395 and Section 6, paragraph 5 of RA No. 9136, as among the laws repealed by RA No. 9337.

x x x                      x x x                      x x x

There are two categories of repeal by implication. The first is where provisions in the two acts on the same subject matter are in an irreconcilable conflict. The later act to the extent of the conflict constitutes an implied repeal of the earlier one. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.

<sup>20</sup> G.R. No. 202534, December 8, 2018.

Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one law cannot [be] enforced without nullifying the other.

Another. Section 27 governs all corporations, agencies, or instrumentalities owned or controlled by the Government (GOCCs), with the exception of a few. It directs these GOCCs to "pay such rate of tax upon their taxable income as are imposed by this Section upon corporations or associations engaged in a similar business, industry, or activity." The directive *presupposes* that the funds are *income*, hence, *taxable*.

On the other hand, Section 8 of RA 7227, as amended by RA 7917, specifically governs BCDA's disposition of the properties enumerated therein and their sale proceeds. The law exempts these sale proceeds from all kinds of fees and taxes as the same law has already appropriated them for specific purposes and for designated beneficiaries.

It is settled that between a general law and a special law, the latter prevails. For a special law reveals the legislative intent more clearly than a general law does. Verily, the special law should be deemed an exception to the general law.<sup>21</sup>

In light of the foregoing considerations, therefore, the standard procedural and documentary requirements for tax refund applicable to GOCCs in general do not apply to BCDA *vis-a-vis* the properties and the sale proceeds specified under Section 8 of RA 7227, as amended. To repeat, there is no income to speak of here; only the sale proceeds of specific properties which the legislature itself exempts from all taxes and fees.

**ACCORDINGLY**, the petition is **DENIED**. The Decision dated December 16, 2014 and Resolution dated April 15, 2015 of Court of Tax Appeals (CTA) En Banc in CTA EB Case No. 1123 (CTA Case No. 8140) are **AFFIRMED**. No costs.

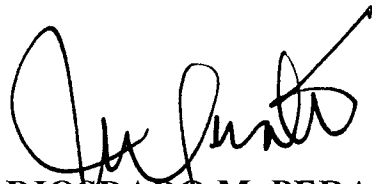
**SO ORDERED.**

  
**AMY C. LAZARO-JAVIER**  
Associate Justice


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<sup>21</sup> *Mandanas v. Ochoa*, G.R. Nos. 199802 & 208488, April 10, 2019.


**WE CONCUR:**



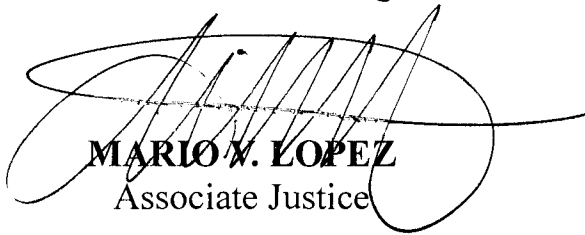
**DIOSDADO M. PERALTA**  
Chief Justice  
Chairperson – First Division



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



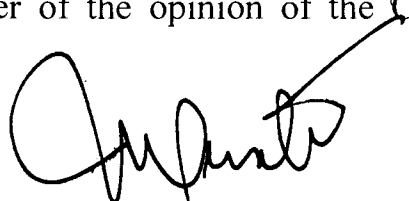
**JOSE C. REYES, JR.**  
Associate Justice



**MARIO V. LOPEZ**  
Associate Justice

**CERTIFICATION**

Pursuant to the Section 13, Article VIII of the Constitution, I certify that the conclusions in the above decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
Chief Justice

