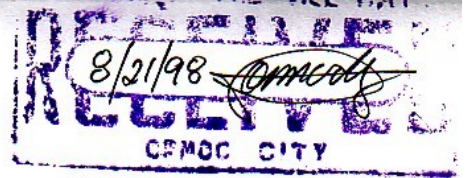
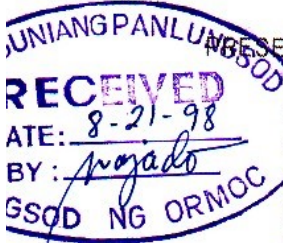


REPUBLIKA NG PILIPINAS
SANGGUNIANG PANLUNGSOD
LUNGSOD NG ORMOC



EXCERPT FROM THE MINUTES OF THE REGULAR SESSION OF THE EIGHTH
SANGGUNIANG PANLUNGSOD NG ORMOC HELD AT THE HONORABLE
PLACIDO ENECIO HALL, SANGGUNIANG PANLUNGSOD
BUILDING ON AUGUST 20, 1998



PRESENT:

Hon. Celso P. Adolfo,
Hon. Jose S. Serafica,
Hon. Dennis Y. Capuyan,
Hon. Mariano Y. Corro,
Hon. Benjamin B. Lladoc,
Hon. Sotero M. Pepito,
Hon. Alfredo F. Capahi,
Hon. Eduardo P. Tan,
Hon. Jose C. Alfaro, Jr.,
Hon. Claudio P. Larrazabal,
Hon. Fernando P. Parrilla,
Hon. Chiqui B. Labagala,

Vice Mayor & Presiding Officer
Kagawad, Floor Leader
Kagawad
Kagawad
Kagawad
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Kagawad
Ex-Officio, Kagawad, Chapter President,
Liga ng mga Barangay ng Ormoc
Ex-Officio, Kagawad,
SK Federation President
Kagawad

ABSENT:

Hon. Nepomuceno P. Aparis I, (Sick Leave), Kagawad, Assistant
Floor Leader

RESOLUTION NO. 98-39

A RESOLUTION REQUESTING CITY LEGAL OFFICER, ATTY. CLETO
L. EVANGELISTA, JR. TO MAKE A THOROUGH STUDY ON THE
REAL ESTATE TAXABILITY OF TAI-PAN DEVELOPMENT, INC. ON
THE PROPERTY OWNED BY THE CITY GOVERNMENT OF ORMOC, NOW
UNDER ITS OPERATION AND TO INFORM THIS SANGGUNIANG ON
THE RESULTS THEREOF AS SOON AS POSSIBLE.

WHEREAS, the City Government of Ormoc is the owner of the Ormoc
City Shopping Mall including the land in which it is erected, and is now
being operated by Tai-Pan Development Incorporated, pursuant to a
Memorandum of Agreement entered into by the City Government of Ormoc and
Tai-Pan Development Incorporated, on December 8, 1995, which document is
denominated as Doc. No. 57; Page No. 12; Book No. VI; Series of 1995 in
the Notarial Register of Notary Public, Atty. Cleto L. Evangelista, Jr.;

WHEREAS, paragraph X of the aforementioned Memorandum of Agreement
states: "The Operator shall pay for the real property taxes on the
building, if due;

WHEREAS, the Office of the City Treasurer of Ormoc has billed Tai-
Pan Development Incorporated for its real property taxes due on the
building referred to in the first paragraph hereof; however, Tai-Pan
Development Incorporated, through its Assistant Vice-President Evelyn
Toledo-Dumdum informed the Office of the City Treasurer of Ormoc that
they are not liable to pay the real property tax in view of the opinion
rendered by Atty. Cleto L. Evangelista, Jr., City Legal Officer that
"the naked ownership of the properties leased out to Tai-Pan
Development, Inc. belongs to the City Government of Ormoc, hence, no
real estate taxes are due";

WHEREAS, Section 234 of the Local Government Code of 1991, on Exemption from Real Property Tax, paragraph (a) thereof, provides: "Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person"; (Underscoring supplied)

WHEREAS, the Supreme Court in the case of MACTAN CEBU INTERNATIONAL AIRPORT AUTHORITY versus HON. FERDINAND J. MARCOS AND THE CITY OF CEBU. G.R. No. 120082 Promulgated on September 11, 1996 (The Lawyer's Review, VOL X, No. 10, page 28) stated: "Moreover, even as the real property is owned by the Republic of the Philippines, or any of its political subdivision covered by item (a) of the first paragraph of Section 234, the exemption is withdrawn if the beneficial use of such property has been granted to a taxable person for consideration or otherwise." (Underscoring supplied)

WHEREAS, in respect to government land, the basis of tax exemption under the old ASSESSMENT LAW was OWNERSHIP; however, under the REAL PROPERTY TAX CODE, and now in the LOCAL GOVERNMENT CODE, that basis was changed to ACTUAL USE, even if the user is not the owner of the property. Thus, in Nueva Ecija vs. Imperial Mining (L-59463, 10 November 1982), the Supreme Court considered as subject to the realty tax government property covered by mining leases; (Compendium of Tax Law & Jurisprudence by Jose C. Vitug, page 418)

WHEREAS, in the case of City of Baguio vs. Busuego (L-29772, 18 September 1980), GSIS and Busuego entered into a contract to sell realty on installment whereby Busuego would be in possession but GSIS would retain title until full payment. Busuego agreed to pay real estate taxes. When Busuego discovered that GSIS was tax-exempt, he claimed a refund. The Supreme Court ruled against Busuego, firstly, because, having agreed to pay the taxes, he was put in estoppel to deny his liability, and secondly, BECAUSE THE TEST OF EXEMPTION IS NOT OWNERSHIP (Sec. 40 RPTC), but 'beneficial use' of the property that "sheds light to the legislative intent behind Commonwealth Act 186."; (Compendium of Tax Law & Jurisprudence by Jose C. Vitug, page 418)

WHEREAS, Section 270 of the Local Government Code of 1991 provides a prescriptive period of five (5) years within which to collect real property taxes;

WHEREFORE, on motion of Kagawad Mariano Y. Corro, Chairman, Committee on Ways and Means, duly seconded by Kagawad Benjamin B. Lladoc; be it

RESOLVED, AS IT IS HEREBY RESOLVED, to pass a resolution REQUESTING CITY LEGAL OFFICER, ATTY. CLETO L. EVANGELISTA, JR. TO MAKE A THOROUGH STUDY ON THE REAL ESTATE TAXABILITY OF TAI-PAN DEVELOPMENT, INC. ON THE PROPERTY OWNED BY THE CITY GOVERNMENT OF ORMOC, NOW UNDER ITS OPERATION AND TO INFORM THIS SANGGUNIAN ON THE RESULTS THEREOF AS SOON AS POSSIBLE;

ADOPTED, August 20, 1998.

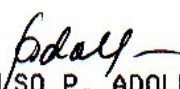
RESOLVED, FURTHER, to furnish copies of this Resolution to - the Honorable City Mayor, Eufrocino M. Codilla, Sr.; City Legal Officer, Atty. Cleto L. Evangelista, Jr.; City Administrator, Mr. Vicente Redoña; City Treasurer, Mr. Jesus E. Capahi; City Assessor, Mrs. Cristita Tugonon, and others concerned.

CARRIED UNANIMOUSLY.

I HEREBY CERTIFY to the correctness of the foregoing resolution.


VIRGILIO D. ANTIG
Board Secretary IV

ATTESTED:


CEL SO P. ADOLFO
Vice Mayor & Presiding Officer