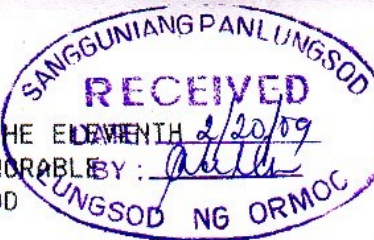


REPUBLIKA NG PILIPINAS
SANGGUNIANG PANLUNGSOD
LUNGSOD NG ORMOC



EXCERPT FROM THE MINUTES OF THE REGULAR SESSION OF THE EDUVENTH 2/20/09
SANGGUNIANG PANLUNGSOD NG ORMOC HELD AT THE HONORABLE BY: *[Signature]*
PLACIDO ENECIO HALL, SANGGUNIANG PANLUNGSOD
BUILDING ON FEBRUARY 19, 2009

PRESENT:

Hon. Claudio P. Larrazabal, Acting Vice Mayor & Presiding Officer
(City Councilor, Floor Leader)
Hon. Sotero M. Pepito, City Councilor, Assist. Floor Leader
Hon. Demosthenes F. Tugonon, City Councilor
Hon. Ruben R. Capahi, City Councilor
Hon. Mariano Y. Corro, City Councilor
Hon. Fe S. Lladoc, City Councilor
Hon. Filomeno P. Maglasang, City Councilor
Hon. Fernando P. Parrilla, City Councilor
Hon. Jose C. Alfaro, Jr., City Councilor
Hon. Lea Doris C. Villar, Ex-Officio City Councilor,
Chapter President, Liga ng mga Barangay ng Ormoc
Hon. Corinne M. Corro, Ex-Officio City Councilor,
SK Federation President

ABSENT:

Hon. Nepomuceno P. Aparis I, (Acting City Mayor), Vice Mayor &
Presiding Officer
Hon. Rafael C. Omega, Jr., (Special Leave), City Councilor

RESOLUTION NO. 2009-032

A RESOLUTION APPRISING THE OFFICES OF THE CITY TREASURER,
CITY ASSESSOR, AND THE BUSINESS, PERMITS AND LICENSING
DIVISION OF THE RECENT DECISIONS OF THE SUPREME COURT,
TO THE EFFECT THAT TELECOMMUNICATIONS COMPANIES ARE NOT
EXEMPT FROM THE PAYMENT OF THE LOCAL FRANCHISE, AND
REAL PROPERTY TAXES.

WHEREAS, the Supreme Court in the case of SMART COMMUNICATIONS,
INC. VS. THE CITY OF DAVAO (G.R. No. 155491, Sept. 16, 2008) ruled that
SMART COMMUNICATIONS is liable to pay the franchise tax imposed by the
City of Davao;

WHEREAS, in the aforecited case, SMART claimed to be exempted from
paying the franchise tax imposed by the Tax Code of Davao City, on the
following grounds, to wit: a) that its franchise (RA No. 7294) was
issued subsequent to RA No. 7160 (Local Government Code of 1991) shows
the clear legislative intent to exempt it from the provisions of the RA
No. 7160; b) that Sec. 137 of RA No. 7160 can only apply to exemptions
already existing at the time of its effectivity and not to future
exemptions; c) that the power of the City of Davao to impose a franchise
tax is subject to statutory limitations such as the "in lieu of all
taxes clause found in Sec. 9 of RA 7294; d) that the imposition of
franchise tax by the City of Davao would amount to violation of the
constitutional provision against impairment of contracts;

WHEREAS, the gist of the Supreme Court decision in the aforecited
case is to the effect that the tax exemption of SMART in its franchise
is not clear whether the "in lieu of all taxes" provision would include
exemption from local or national taxation, and since SMART failed to
prove its exemption, the uncertainty must be construed strictly against
SMART, and the doubt must be resolved in favor of the City of Davao. The
Court ruled that the "in lieu of all taxes" clause in SMART'S franchise
refers only to taxes, other than income tax imposed under the National
Internal Revenue Code. It does not apply to LOCAL TAXES. The clear
intent is for the "in lieu of all taxes" clause to apply only to taxes
under the National Internal Revenue Code and NOT TO LOCAL TAXES;

WHEREAS, the Supreme Court in the case of DIGITAL TELECOMMUNICATIONS PHILIPPINES, INC. VS. CITY GOVERNMENT OF BATANGAS (G.R. No. 156040, Dec. 11, 2008) ruled that DIGITAL is not exempted from the payment of real property tax being collected by the defendant City of Batangas;

WHEREAS, in the aforementioned case, DIGITAL maintained that based on Sec. 5 of RA 7678 (Digital's Legislative Franchise) it is exempted from the payment of real property tax based on the phrase "exclusive of this franchise" is to limit real properties that are subject to realty tax only to properties that are not used in Digital's telecommunications business;

WHEREAS, the Supreme Court in the aforementioned case, in effect refutes DIGITAL's contention, in this manner: That the phrase "exclusive of this franchise" simply means that petitioner's franchise shall not be subject to the taxes imposed in the first sentence of Section 5. The first sentence lists the properties that are subject to taxes, and the list excludes the franchise. The historical usage of the phrase "exclusive of this franchise" in franchise laws enacted by Congress indubitably shows that the phrase is not a grant of tax exemption, but an exclusion of one type of personal property subject to tax, and the excluded personal property is the franchise. Nowhere in the language of the first sentence of Section 5 of RA 7678 does it expressly or even impliedly provide that petitioner's real properties that are actually, directly and exclusively used in its telecommunications business are exempt from payment of realty tax. On the contrary, the first sentence of Section 5 specifically states that the petitioner, as the franchisee, shall pay the "same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay" That the first sentence of Sec. 5, of RA 7678 is the same provision found in almost all legislative franchises in the telecommunications industry dating back to 1905. It is the same provision that appears in the legislative franchises of other telecommunications companies like Philippine Long Distance Telephone Company, Smart Information Technologies, Inc., and Globe Telecom. Since 1905, no telecommunications company has claimed exemption from realty tax based on the phrase "exclusive of this franchise" until petitioner filed the present case on 3 July 1999;

WHEREAS, attached hereto, are copies of the aforementioned decisions of the Supreme Court for the information and proper guidance by all the concerned departments of the City Government of Ormoc in the hope and expectations that taxes due from telecommunications companies operating in the City of Ormoc shall be properly collected, and to inform this Sanggunian of the taxes collected therefrom;

FOREGOING PREMISES CONSIDERED, on motion of City Councilor Mariano Y. Corro, Chairman, Committee on Ways & Means, severally seconded by City Councilors Jose C. Alfaro, Jr., Ruben R. Capahi, Fe S. Lladoc and Sotero M. Pepito; be it

RESOLVED, AS IT IS HEREBY RESOLVED, to pass a resolution APPRISING THE OFFICES OF THE CITY TREASURER, CITY ASSESSOR, AND THE BUSINESS, PERMITS AND LICENSING DIVISION OF THE RECENT DECISIONS OF THE SUPREME COURT, TO THE EFFECT THAT TELECOMMUNICATIONS COMPANIES ARE NOT EXEMPT FROM THE PAYMENT OF THE LOCAL FRANCHISE, AND REAL PROPERTY TAXES;

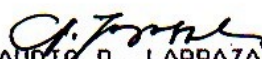
ADOPTED, February 19, 2009.

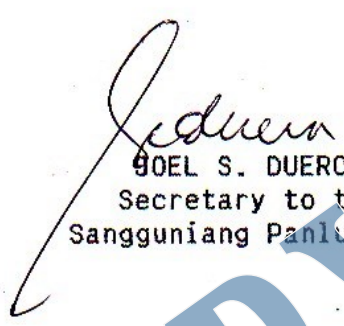
RESOLVED, FURTHER, to furnish copies of this resolution to - The Honorable City Mayor, Eric C. Codilla, the City Treasurer, the City Assessor of Ormoc, the Chief of the Business, Permits & Licensing Division, the City Administrator, and all others concerned;

CARRIED UNANIMOUSLY.

I HEREBY CERTIFY to the correctness of the foregoing resolution.

ATTESTED:


CLAUDIO P. LARRAZABAL
Acting Vice Mayor & Presiding Officer
(City Councilor, Floor Leader)


NOEL S. DUERO
Secretary to the
Sangguniang Panlungsod

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