ANNUAL SURVEY OF TAXATION

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POWER OF MUNICIPAL CORPORATIONS TO TAX.

In this jurisdiction, the levy and collection of license fees for revenue purposes is justified by a due delegation of the taxing power by the State to the taxing authority. The power of a municipality to extract fees must be expressly granted by the charter or statute and is not to be implied from the general power to license and regulate.[1] In the case of *Medina v. City of Baguio*,[2] the Supreme Court reiterated the above-mentioned principle. The case involves the validity of three ordinances passed by the City Council of Baguio. Ordinance No. 99 fixes the license fees to be paid by persons, entities and corporations who may engage in business within the city. Ordinance No. 100 imposes a percentage tax or a specific tax on certain articles, among which are gasoline and oil. The third ordinance No. 62 we shall not discuss, because it was not brought up on appeal.

Under Ordinance No. 99, the City Government levied and collected from cinema operators a fixed amount as license fees.[3] The operators assailed the validity of this ordinance, contending that the City Government has only the power to impose a license fee but not to levy a tax upon theaters for revenue purposes.[4] The Court, in upholding the action of the City Government, held that the City Government is empowered not only to impose a license fee but also to levy a tax for revenue purposes under the terms of R. A. 329.[5] This

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** The aid of the following in briefing the cases is hereby acknowledged: B. Abela, R. Armovit, O. Alparce, O. Garcia, Q. Carag, Jr. and S. Santos.

[1] *Cu Unjieng v. Patstone*, 42 Phil. 818, 862.

[2] G. R. No. L-4060, prom. on August 29, 1952.

[3] This ordinance fixes a license fee a year for every gasoline station installed in the City and a fee of ₱2400 for theaters which come under Class "A"; ₱1800 for those coming under Class "B"; and ₱1200 for those coming under Class "C".

[4] The petitioners have in mind Sec. 2553, par. c, of the Revised Administrative Code which provides:

"To issue licenses fixing the amount of the license fee for the following: * * * theaters, theatrical performances and all other performances and places of amusement, shooting galleries, slot machines not used for gaming and merry-go-rounds;"

[5] This Act, which took effect on July 14, 1948, amended Sec. 2553, par. (c) of the Revised Administrative Code. The amendatory Act provides:

(c) To tax, fix the license fee and regulate the business of the following:

* * * hotels, clubs, restaurants, lodginghouses, boarding houses, livery stables, private police detectives, massagists, manicurists, chiropodists, hair dressing or

amendment, conferred on the City Council the "power to tax, to license and to regulate" provided that the subjects affected be one of those included in the charter. This has been construed to include the power to impose license fees for revenue purposes and not merely to regulate.[6]

Ordinance No. 100, which imposes a specific tax on some articles covered by the business of the tax payer, was held invalid on the ground that the City Government does not have the power to tax specific articles used in business.[7] The power to levy a specific tax has been expressly withheld from its charter by the lawmaking body.[8]

Effect of general power to tax on charter or franchise.

It is a ruling principle in this jurisdiction that a special law or charter cannot be amended, altered or repealed by a general law by implication.[9] The case of *Philippine Railway Co. v. Collector of Internal Revenue* [10] involves an application of this doctrine. The plaintiff in this case is a grantee of a legislative franchise to operate a railway line in Panay Island. By the terms of its charter,[11] it was required to pay "an amount equal to one-half of one per centum of its gross earnings" to the government, which "annual payments

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beauty parlors, painters, nightclubs, theaters * * * and such other businesses trades, and occupations as may be established or practised in the City.

[6] *Medina v. City of Baguio*, G. R. No. L-4060, promulgated on August 29, 1952.

[7] The Court held: "This is clearly inferred from a reading of said section (Sec. 2553 [c]), as amended and from the concluding sentence appearing therein, to wit, 'and such other businesses, trades and occupations as may be established or practised in the city.' One reason for this undoubtedly is the fact that under section 142 of the Internal Revenue Code (Com. Act No. 466, as amended by Republic Act No. 39) most of the products mentioned in the charter, particularly gasoline and oil, are already specifically taxed and section 361 of the said Code, the City of Baguio gets a share of 20% of the amount of specific tax collected. At any rate the charter of the City of Baguio does not show plainly an intent to confer that power upon the city and, following the rule already adverted to, this doubt or ambiguity must be resolved against the city."

[8] An indication of the legislative intent on this matter is Com. Act No. 472 which confers general authority upon Municipal Councils to levy taxes, subject to certain limitations, wherein it was specifically provided that the general authority so conferred shall not include "percentage taxes and taxes on specified articles." In other words, the power to levy a specific tax has been expressly withheld.

[9] See *Manila Railroad Company v. Rafferty*, 40 Phil. 224.

[10] G. R. No. L-3859, prom. March 26, 1952.

[11] Section 13 of Act 1497, enacted May 28, 1906 provides, in substance:

* * * there shall be paid by the grantee to the Philippine Government annually for the period of thirty years from the date hereof an amount of one per centum of the gross earnings of the grantee . . . Such annual payments . . . shall be in lieu of all taxes of every name and nature—municipal, provincial or central—upon its capital stock, franchises, right of way, etc. . . ."

shall be in lieu of all taxes of every name and nature upon its capital stock, franchises and right of way." The Collector levied, assessed and collected from the plaintiff a five per cent tax on its gross earnings under the authority of Section 259 of the National Internal Revenue Code.[12] The Court, in denying the right of the Collector to impose the 5% tax, invoked the ruling in the case of *Manila Railroad Company v. Rafferty* [13] and declared that the Legislature, in adopting the Internal Revenue Code which is a general law, did not intend to amend, repeal or modify the charter, which is a special Act.[14] Moreover, the National Internal Revenue Code specifically exempts franchises "the terms of which preclude the imposition of a higher tax"; the provision of the charter of the petitioner expressly precludes the imposition of any other tax.[15]

ASSESSMENT LAW:

Taxpayers are, by nature, evasive in the fulfillment of their obligation to share the burden of maintaining and supporting the government. Unless coerced by some regulatory measure, taxpayers would rather forego this duty than pay their dues voluntarily.

Under the law, real estate tax constitutes a burden on the land superior to all other liens of any kind whatsoever and is enforceable against the property whether in the possession of the delinquent or any subsequent owner or possessor.[16] The government may proceed against and follow the property subject to tax whoever may come

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[12] Sec. 259 of the National Internal Revenue Code, as amended by Republic Act No. 39 provides:

"There shall be collected in respect to all existing and future franchises, upon the gross earnings of 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 corporations upon whom such franchise are conferred, whichever is higher, unless the provisions thereof preclude the imposition of a higher tax . . ."

[13] Reference was made to the case of *Manila Railroad Company v. Rafferty, supra,* by reason of the close similarity between the laws and the franchise involved and the issues litigated.

[14] The Court, in denying the right of the Collector to collect the tax, held:

". . . . The Legislature, having specially considered all the facts and circumstances in the particular case, in granting a special charter, it will not be considered that the Legislature, by adopting a general law containing provisions repugnant to the provisions of the charter, and without making any mention of its intent to amend or modify the charter, intended to amend, repeal, or modify the special Act."

[15] Section 13 of the Charter of the petitioner expressly provides:

"Such annual payments . . . shall be in lieu of all taxes of every name and nature—municipal, provincial and central."

[16] Sec. 21, C. A. 470; See Sec. 68, R. A. 409, otherwise known as the Revised Charter of the City of Manila

in possession of it,[17] and have the property delinquent in payment of taxes sold at public auction for the satisfaction of the tax lien.[18] After the expiration of the year for which the tax is due, the government, through the provincial treasurer or city treasurer, as the case maybe, may enforce the tax lien under either of two summary proceedings; namely: distraint of personal property of the owner [19] or sale of the real property subject to tax.[20] Before any of these remedies for collection of delinquent taxes can be resorted to, compliance with certain requirements is required by statute,[21] otherwise the remedy would be unenforceable for want of due process.[22]

Notice of Sale—

Foremost among these requirements is notice to the owner of the realty. Statutory requirements of notice of tax sale are imperative and must be complied with; in the absence of notice to the tax deliquent, a sale passes no title to the tax purchaser.[23] But notice may be actual or constructive, as long as it informs the owner of the real property of the time when and the place where the sale is to take place.[24]

In this jurisdiction, proceedings for the collection of taxes upon real estate are *in personam*.[25] The authorities are first required to hunt up the owner in case of default in payment of land tax and to seize his personal property. Likewise, in a case [26] decided after the

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[17] *City of Manila v. Mitchell*, 52 Phil. 138; *Provincial Treasurer of Occ. Negros v. The Associated Oil Co.*, 71 Phil. 78.

[18] Sec. 35, C. A. 470; sec. 69, R. A. 409.

[19] Secs. 30-34, C. A. 470; Secs. 65-67, R. A. 409.

[20] Secs. 35-36, C. A. 470; Secs. 69-70, R. A. 409.

[21] *Ibid.*

[22] *Cabrera v. Prov. Treas. of Tayabas and Catigbac*, 75 Phil. 780.

[23] *Ibid; Castillo v. McConnico*, 168 U. S. 674; 42 L. ed. 622; *Re Auditor General*, 266 N. W. 464.

[24] *Ibid;*

[25] *Government of the Phil. Is. v. Adriano*, 41 Phil. 112, 119.

In this case, our own Court held:

> "* * * proceedings in the Philippines for the sale of land for the nonpayment of taxes were *in personam*. The tax was not a charge upon the land alone. The authorities were first required to hunt up the owner and to make the tax out of his personal property. Only the particular interest or title of the person to whom the land is assessed was sold." See also *Valencia v. Jimenez & Fuster*, 11 Phil. 492; *Lopez v. Director of lands*, 47 Phil. 23.

[26] *Cabrera v. Provincial Treasurer of Tayabas & Catigbac, supra.*

In *U.S. v. Estavillo*, 19 Phil.. 478, our Supreme Court was of the opinion that proof of service of notice prescribed by Section 16 of Act 1791 (formerly the Assessment Law) while essential in proceedings looking to the enforcement of a tax lien against real estate, is not essential where the only question involved is the delinquency of the person in whose name the tax is assessed. From this, it may be

liberation, the Supreme Court held that under section 35 of Commonwealth Act No. 470,[27] notice of the public sale must be given to the delinquent taxpayer.

In the case of *Valbuena v. Reyes*[28] our Supreme Court upheld the rights of the purchaser at a tax sale where no notice of delinquency sale was given or served to the owner of the property. At first blush, this new ruling seems to run counter to the previous holdings of the same tribunal laid down in several cases aforementioned. The facts, however, are entirely different. In the present case, the owner of the land died six years previous to the public sale. The heirs did not take steps to administer the estate; accordingly the land still remained in the name of the deceased, and under the same address. Notice by publication was, however, made by the City Treasurer, under whose authority the sale was made, but no notice was given to the owner. The Court, in denying the allegations of the heirs held that "under Section 2498 of the Revised Administrative Code,[29] as amended by Act 4173, the City Treasurer need not give personal notice to the delinquent taxpayer. All that the treasurer is required to do by law is to advertise the property for sale, post notices in public places and in the district where the realty is located and publish the notice of sale in newspapers of general circulation, once a week for three consecutive weeks." In the case at bar, the City treasurer complied with all of these requirements. However, it should be noted that, had the real property in question been located in the province, notice to the owner of the property should have been made by registered mail or by messenger.[30] Under the Assessment

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safely inferred that notice, as provided in Section 16 of the old Act, is not required for constituting a taxpayer delinquent, but is necessary for the purpose of enforcing the tax lien.

[27] Otherwise known as the Revised Assessment Law, applicable to all provinces, except to Chartered Cities where the respective charters provide for levy, assessment and collection.

[28] 47 O. G. 1209.

[29] Otherwise known as the Charter of the City of Manila. Sec. 69, of Republic Act No. 409, the present Charter of Manila, provides:

". . . The advertisement shall be by posting a notice at the main entrance of the City Hall and in a public and conspicuous place in the district in which the real estate lies and by publication once a week for three weeks, in a newspaper of general circulation published in the City if any there be. Publication in the Official Gazette shall not be required for such notice . . ."

[30] Sec. 35, of Com. Act No. 470, otherwise known as the Assessment Law, provides: " . . . Such advertisement shall be made by posting a notice for three consecutive weeks at the main entrance of the provincial building and all municipal buildings in the province, and in a public and conspicuous place in the barrio wherein the property is situated, in English, Spanish, and the local dialect commonly used, and, in the discretion of the provincial treasurer, by publishing it once a week

Law, as applied to real properties located in the provinces, notice is essential for the validity of the tax sale: otherwise, the sale passes no title to the purchaser. The ruling laid down by the Supreme Court in the previous cases [31] remain unchanged, for they involve the application of the Assessment Law while the doctrine laid down in the case of *Valbuena v. Reyes*, deals with the Charter of the City of Manila.

Distraint of Personal Property—

In the event that a taxpayer defaults in the payment of his real property tax, is the government required to seize or distrain his personal property first, before it can enforce the tax lien on the realty itself? In the case of Government of the *Philippine Islands v. Adriano*,[32] our Supreme Court, in construing Sec. 74-83 of Act No. 82, as amended by Act No. 1139, declared that in case of default in payment of taxes, the personal property of the delinquent is first seized; thereafter, the tax and penalties may be enforced against the real property. In the light of the Revised Assessment Law, the construction given by the Court to the choice of remedies for the enforcement of real property taxes is no longer authoritative. The Municipal Code construed in that case makes explicit provision that personal property should first be seized and sold; in case of deficiency, the realty may be seized and sold at public sale. Under the present law,[33] there is no clear mandate that the remedy against personal property first be had. On the other hand, the provincial treasurer is given ample discretion as to the choice of remedies.

Under the Charter of Manila, the rulings laid down by the Supreme Court in construing the old charter have been followed consistently. In the first of these cases,[34] the Court ruled that the City of Manila, under its charter, may sell either the personal property of the taxpayer or the land upon which the tax exists. In the choice

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for three consecutive weeks in a newspaper of general circulation published in the province, if there be any. Copy of the notice shall be forthwith sent by registered mail or by messenger to the delinquent taxpayer at his residence if known to the treasurer . . ."

[31] See: *Cabrera v. Provincial Board, supra; People v. Estavillo, supra.*

[32] 41 Phil. 112, 118. In this case, the Court held: "According to these provisions, in case of default in the payment of land taxes, the personal property of the delinquent was first seized. Taxes and penalties were thereafter enforcible against the realty and, if necessary, it could be sold to satisfy the public taxes assessed against it."

[33] A careful perusal of Sections 30 and 35 of the Revised Assessment Law brings to light this distinction: that distraint of personal property may be had after delinquency occurs but sale of the realty may be had only after the expiration of the year in which the tax is due. A taxpayer is not deemed delinquent until after the expiration of the last day in which payment of the tax should be made, which is May

of remedies, the City Treasurer has broad discretion. This ruling has been reiterated in the case of *Valbuena v. Reyes*,[35] where the Court, in construing section 24-98 of the Revised Administrative Code, as amended by Act 4173, held that the city treasurer need not seize personal properties but may go directly against the delinquent property. Under the present charter, the remedies are alternative but not concurrent; resort to either may be had in the discretion of the city treasurer.

NATIONAL INTERNAL REVENUE CODE

Capital Gains from Sale of Capital Assets:

Capital assets is defined as property held by the taxpayer but does not include, among others, real property used in the trade or business of the taxpayer.[36] But does the sale of real property rented out to tenants and administered through agents involve the sale of capital assets or does it involve a sale of real property used in trade or business? In the recent case of *Argellies v. Meer*,[37] our Supreme Court laid down the rule that a sale of a lot located in Manila, owned by a non-resident alien and administered by a local firm, involves a sale of capital assets. In this case the taxpayer, a foreigner, owned a lot and building in Manila which was administered and managed by a local firm. The property was leased to third parties, with the local firm collecting the rents and, after deducting expenses, forwarding the income to the plaintiff taxpayer in France. When the building was destroyed during the war, plaintiff sold the lot, through the local firm, and obtained a net profit of ₱74,899.77. Plaintiff declared 50% of this amount for taxation, believing that the profit was capital

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31 and November 30 of every year, unless the Provincial Board changes the date by resolution to the same effect. After the lapse of May 31, the taxpayer who fails to pay the first installment, is considered delinquent; but sale of the realty may not be made until after the lapse of the full year until December 31 of that year. It should be noted that the distraint of personal property is not a prerequisite before the sale of the realty.

[35] Secs. 65 & 69, Republic Act No. 409.

[36] Sec. 34 (a) of Com. Act No. 466, otherwise known as the National Internal Revenue Code, provides:

The term "capital assets" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property, used in trade or business, of a character which is subject to the allowance for depreciation provided in subsection (f) of section 30; or *real property used in the trade or business of the taxpayer.*

[37] GR No. L-3730, promulgated on April 25, 1952.

gain.[38] The Collector treated the whole amount as taxable income on the theory that as the plaintiff was engaged in the business of leasing or selling real estate, it was not a sale of capital assets, but a sale of real property used in business. The Court, in overruling the action of the Collector, held that the plaintiff was not engaged in "trade or business" as that phrase is used in Section 34(a) of the National Internal Revenue Code, because plaintiff was not engaged in the business of leasing property.[39] An owner who allocates the actual administration of the property to others and performs only such acts as are appropriate to safeguard ownership is not regarded as doing business.[40]

RECOVERY OF INTEREST ON TAX ILLEGALLY COLLECTED

It is a well-settled rule that interest may not be recovered against the sovereign government on taxes illegally collected, unless the government's consent has been manifested by an Act of the Legislature or by lawful contract of its executive officers.[41] However, a municipal corporation which wrongfully exacts money and holds the same without authority or just claim of right, is liable for interest thereon, even in the absence of a statute.[42] Likewise, the general rule that

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[38] Capital gains are derived from the sale or exchange of capital assets. The National Internal Revenue Code, in defining capital assets, expressly excludes "real property used in trade or business." Hence, if the real property is not used in trade or business of the taxpayer, it is classified as capital assets; and a sale of such property will give rise to capital gains. See Section 34 (a)-2, Com. Act No. 466 as amended.

[39] The issue upon which the decision of the case rests was whether the plaintiff was engaged in the business of leasing real property. If in the affirmative, the tax imposed by the Collector was properly levied; if not, the tax treatment by the plaintiff was correct. Only one half of the capital gains was taxable because the property sold was held for more than 12 months. See Sec. 34(b)-2.

[40] In construing the meaning of the phrase "engaged in trade or business," the Court quoted the decision in a case, *People, ex rel. Nauss et al. v. Graves*, 283 NY 383; 28 NE 2d 881, where the Supreme Court of New York State held, upon similar set of facts:

"When used in tax statutes . . . doing business connotes something more than ownership of property and receipt of income derived from said property . . . One who allocates the actual administration of the properties to others and himself performs only such acts as are appropriate to safeguard his ownership, is to be distinguished from one who actually participates in administering the management of the properties. If there is to be maintained a distinction between ownership on the one hand and the doing of business on the other hand . . . then the appellant (taxpayer) may not be regarded as having been engaged in the doing of business."

In the present case, the Court held that the case for the plaintiff was stronger because he did not execute personally any lease contracts and did not pass upon the alterations on the property.

[41] *Sarasola v. Trinidad*, 40 Phil. 252.

[42] *Viuda e Hijos de Pedro Roxas v. Rafferty*, 37 Phil. 957.

costs are imposed upon the unsuccessful party applies also to municipal corporations.[43]

The foregoing principles were reiterated in the recent case of *Macondray & Co. Inc. v. Sarmiento*,[44] wherein the Municipal Board of Manila passed three ordinances imposing license fees on dealers of motor vehicles and accessories.[45] The respondent City Treasurer collected separate quarterly license fees on plaintiff on the assumption that plaintiff is a dealer of new motor vehicles and second-hand motor vehicles. On the other hand, plaintiff paid license fees as a dealer of new motor vehicles, including in its quarterly gross income as such dealer, such gains it derived from trade-ins of old vehicles for new motor vehicles. The court, in allowing recovery, held that plaintiff cannot be required to take out two separate licenses and pay two separate quarterly fees on its gross sales when it is willing "to include the sales of its second-hand motor vehicles in those of the new and thereby pay a higher rate of fees, as provided for in Ordinance Nos. 2980 and 3046." In addition, the court ordered the respondent to refund plaintiff whatever was illegally collected, plus interest and costs. A municipal corporation, like the City of Manila, may be made to pay interests as well as costs where it collects taxes illegally, unlike a sovereign government or State, such as the Government of the Philippines.[46]

REMISSION OF TAXES:

May real property taxes paid during the Japanese Occupation, including the last half of 1941, be remitted under Commonwealth Act No. 703?[47] The Supreme Court, in the case of *Juan Luna Subdivision, Inc. v. Sarmiento*,[48] held that only taxes "owed or owing"

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[43] *Palanca v. City of Manila*, 41 Phil. 125.

[44] G. R. No. L-3739, promulgated on January 28, 1952.

[45] Ordinance No. 2972 is entitled, "An Ordinance Imposing License Fees on Dealers of Second-Hand Motor Vehicles and for Other Purposes." Ordinance No. 2980 imposes license fees on business dealers of motor vehicles and in accessories and other kinds of machines. Ordinance No. 3046 is entitled, "An Ordinance Amending Section 1 of Ordinance No. 2980, imposing a License Fee on the Business of Dealers on Motor Vehicles and Accessories and on Accessories and Spare Parts (New Only)."

[46] *Viuda e Hijos de Pedro Roxas v. Rafferty, supra; Palanca v. City of Manila, supra.* Interests and costs may be awarded against a municipal corporation or mere governmental agency like any unsuccessful party. This applies to the City of Manila.

[47] Section 1 of C. A. No. 703, approved on November 1, 1945, provides:

"All land taxes and penalties due and payable for the years 1942, 1943, 1944 and fifty per cent of the tax due for 1945, are hereby remitted. The land taxes and penalties due and payable for the second semester of the year, 1941, shall also be remitted if the remaining fifty per cent corresponding to the year 1945 shall have been paid on or before December 31, 1945."

[48] G. R. No. L-3538, promulgated on May 28, 1952.

are remitted; it does not include taxes actually paid. In answer to the argument of the plaintiff that such a construction would constitute unfair discrimination, the tribunal declared that "the remission of taxes due and payable to the exclusion of taxes already collected does not constitute unfair discrimination" because "all taxpayers of a class are treated alike."[49] As to the justice of the measure, the confinement of condonation to delinquent taxes only, would prevent taxpayers who paid in worthless Japanese notes from recovering in genuine currency and deriving an undue advantage at the expense of the people at large.

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[49] The Court held:

We do not see that literal interpretation of C. A. 703 runs counter and does violence to its spirit and intention nor do we think that such interpretation would be "constitutionally bad" in that "it would unduly discriminate against taxpayers who paid in favor of delinquent taxpayers."

The remission of taxes due and payable to the exclusion of taxes already collected does not constitute unfair discrimination. Each set of taxes is a class by itself, and the law would be open to attack as class legislation only if all taxpayers belonging to one class were not treated alike . . ."