

ANNUAL SURVEY OF TAXATION

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I. REAL PROPERTY TAX:—*Personal notice not necessary in tax sale.*

One of the essential requirements for a valid sale of real property in case of delinquency in payment of taxes is that notice of such delinquency and sale, as prescribed by law, be strictly complied with, otherwise, a sale made without such compliance is void for lack of due process. In the case of *Eulalia Estanislawa et al v. Fabian Soberano*,¹ our Supreme Court upheld the validity of a tax sale where no personal notice of delinquency and of sale at public auction had been received by the delinquent owner or his heirs. The Court further stated that the failure to receive notice due to the death of the owner or lack of interest of the heirs did not affect the validity of the proceedings.

The Revised Charter of the City of Manila² provides that, for a tax sale to be valid, advertisement of such sale must be made: (1) by posting a notice at prescribed places for the necessary period of time; and (2) by publication for the prescribed period in a newspaper of general circulation published in the city. Personal notice to the delinquent taxpayer is not required, nor is it necessary, although, as a matter of practice, the City Government does serve personal notice by mail. But an omission or failure to send such notice would not amount to lack of due process.³ However, under the Assessment Law⁴ the formalities required for a valid tax sale are, among others: (1) posting of notice at prescribed places for the prescribed period of time; and (2) personal notice by registered mail or by messenger. In municipalities then, an omission or failure to serve personal notice of delinquency and of sale will constitute a substantial defect which will avoid the tax sale; but such defect will not avoid a tax sale under the Charter of Manila. On the other hand, an omission or failure to give notice by publication is fatal for the validity of a tax sale under the Revised Charter of Manila, while such omission or failure will not invalidate a tax sale under the Assessment Law because notice by publication is only discretionary on the part of the municipality.⁵

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¹ G.R. No. L-5773, promulgated May 10, 1954. This case involved real property situated in the City of Manila.

² Sec. 69, R.A. No. 409, otherwise known as the Revised Charter of Manila.

³ *Valbuena et. al. v. Aurelio Torres*, 47 O.G. 1209.

⁴ Sec. 35, C.A. No. 470 as amended, otherwise known as Assessment Law. This law governs sales of real property for tax delinquency in municipalities but not in chartered cities.

⁵ The difference may be due to the fact that notice by posting and publication is sufficient in centers of population like Manila where newspapers are in general

II. INTERNAL REVENUE TAXES: Specific tax—By whom paid.

Specific taxes are internal revenue taxes which apply to things manufactured or produced in the Philippines or to things imported from abroad, for domestic consumption.⁶ Specific taxes are thus imposed on imported cigarettes.⁷ In the case of *Good Day Trading Corporation v. Board of Tax Appeals*⁸ the petitioner sold to third parties cigarettes imported by it from abroad while still in the customs warehouse and before specific taxes had been paid. In resolving the question as to who is liable to pay the tax, the Court, applying section 125 of the National Internal Revenue Code, held that either the importer or owner shall pay the tax, depending on whether the sale is valid or not. If the sale is valid, then the purchaser becomes the owner and shall pay the tax.

Jurisdiction of the BTA—effect of the UST case.

In the same case⁹ the petitioner assailed the jurisdiction of the Board of Tax Appeals in reversing the decision of the Collector authorizing refund of specific taxes.¹⁰ The basis of the petitioner's argument was that the BTA was illegally established as held in the case of *University of Santo Tomas v. Board of Tax Appeals*,¹¹ therefore, it could not entertain nor pass upon the present case. The Court held that Republic Act No. 1125¹² was passed presumably due to the ruling in the aforementioned case; but it did not nullify all acts nor deprive the BTA of its jurisdiction to act on certain cases properly before it. Although R. A. 1125 repealed Executive Order 401-A, nevertheless, it provided

circulation and the inhabitants are presumed to read public notices so published; but in municipalities, it is not likely that many people read newspapers or that any newspaper is widely circulated throughout such places.

⁶ Sec. 123, C.A. 466 as amended.

⁷ Sec. 137, C.A. 466 as amended by R.A. 589 and 1090.

⁸ G.R. No. L-6574, prom. July 31, 1954. In this case, petitioner imported 238 cases of Chesterfield cigarettes and stored them in a bonded warehouse. While still in the warehouse, petitioner sold the goods in favor of third parties, some 29 in number, subject to the condition that the vendees shall pay the specific tax. The vendees applied their certificates of indebtedness (backpay certificates) in payment of the tax which was accepted by the Collector. In so far as the original assessment involved an amount exceeding ₱5,000, the case was brought before the BTA for final resolution under section 9 of Executive Order 401-A. The BTA resolved that the payment by means of backpay certificates was void and held that the petitioner was liable to pay the specific taxes. Consequently, the BTA reversed the decision of the Collector granting the petitioner a refund of certain sums paid by the petitioner as initial payment on the tax.

⁹ *Good Day Trading Corporation v. Board of Tax Appeals*, *supra*.

¹⁰ Under section 309 of the Internal Revenue Code, the Collector may, among others, "refund taxes erroneously or illegally received, or penalties imposed without authority . . ." This right of the Collector is subject to section 9 of Ex. Order 401-A which provides in part: . . . "But in cases involving an original assessment of more than ₱5,000, the approval of the Secretary of Finance of the action taken (under section 309 of the IRC) by the Collector of Internal Revenue . . . shall not become effective until and unless the same is approved by the Board of Tax Appeals."

¹¹ G.R. No. L-5701, prom. June 23, 1953.

¹² The present case was on appeal before the Supreme Court when R.A. 1125 was passed to take effect on June 15, 1954.

that "all cases decided by the Board of Tax Appeals and appealed to the Supreme Court pursuant to Executive Order 401-A shall be decided on the merits to all intents and purposes as if said Executive Order had been duly enacted by Congress."¹³ In applying section 9 of Executive Order 401-A in relation to section 309 of the Internal Revenue Code, the Court held that the BTA had jurisdiction to review the propriety and amount of the refund but not the assessment and payment of specific tax.¹⁴ As to whether specific taxes may be paid with certificates of indebtedness, the Court held that it is wholly the legal concern of the National Treasurer and the Department of the Government to be affected by the use of such backpay certificates; it is not for the BTA to determine such issue.

Income Tax: tuition fees of students not income; educational corporation is exempt.

Is the net income from tuition and other fees collected and received by the educational institution from its students in carrying on its various activities subject to tax?¹⁵ Under section 27 paragraph (e) of C. A. 466 as amended, corporations or associations organized and operated exclusively for educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual are exempt, provided that the income is not derived from their properties, real or personal, nor from any activity conducted for profit. In the recent case of *Jesus Sacred Heart College v. Collector of Internal Revenue*,¹⁶ the Collector collected a tax on the income of the petitioner on the ground that, having collected excessive fees from its students, it is engaged in an activity conducted for profit. The Supreme Court answered the foregoing question in the negative, holding that, among others: (1) the amount of fees charged depends upon the policy of a given administration at a

¹³ Section 9 of Executive Order 401-A has not been reenacted as part of R.A. 1125. Under present state of the law creating the Court of Tax Appeals, action by the Collector authorizing refund of taxes illegally or erroneously collected even if over P5,000 is not subject to the approval of the Court of Tax Appeals.

¹⁴ The assessment and payment of the specific tax of P52,350 was not subject to review by the Board of Tax Appeals. What was subject to and what was in issue here was the refund of P6,800 approved by the Collector and approved by the Secretary of Finance because that was an action taken by the Collector pursuant to his authority to make refund under sec. 309 of the Internal Revenue Code. Consequently the consideration by the BTA should be confined to that amount and propriety of the refund, nothing more.

¹⁵ Sec. 24 of C.A. 466 as amended, provides, in part: "... Provided, however, That Building and Loan Associations operating as such in accordance with sections 39-55, of R.A. 337; as well as private educational institutions, shall pay a tax of twelve per centum and ten per centum, respectively, on their total net income. . . ."

¹⁶ G.R. No. L-6807, promulgated May 24, 1954. The petitioner, in this case, is a sectarian educational institution organized under the Corporation Law but without stockholders. It is engaged primarily and exclusively in the instruction and education of young girls. In the years sought to be taxed, 1946, 1947, and 1948, it derived its income solely from tuition and other fees of students. No part of its income is derived from its properties nor from investments.

particular time. In the absence of contrary evidence, it can be presumed that the fees fixed by the administration are intended to insure and facilitate the accomplishment of its objectives; (2) every responsible organization engaged in education must have a net income or surplus over and above operating cost in order to insure its own existence and reasonably assure that it will not incur any deficit; otherwise, section 27, paragraph (e) of the Internal Revenue Code would be construed, if at all, to apply only to institutions without surplus and therefore always on the verge of bankruptcy. Congress did not intend such a narrow construction; and (3) it is not the intention of Congress to deny organizations engaged exclusively in education from improving its own standards by taxing net income or surplus derived from student fees. To give such an interpretation would be to defeat the very purpose for which exemption is granted by law.¹⁷

To come under the exemption provided by section 27, paragraph (e) of the National Internal Revenue Code, an educational institution must comply with all the following conditions: (1) that it is engaged and operated exclusively for educational purposes;¹⁸ (2) that it derives its income solely from tuition and other fees of students;¹⁹ (3) that it does not derive any part of its income from properties, real or personal nor from investments, even if the income from such sources are destined exclusively for educational purpose;²⁰ and (4) no part of its income inures to the benefit of any individual or private stockholder.²¹ Suppose the educational institution derives income from student fees, from properties and from investments elsewhere, but all income derived from such sources are devoted exclusively to education, is it exempt? Under the holding the present case, only that portion of the income derived solely from tuition and other fees of students is exempt; the rest is taxable.

Remedies of Taxpayer:—Injunction

It is a fundamental principle in taxation that the power to collect taxes may not be restrained by injunction²² otherwise, no government could exist where the collection of revenues could be delayed at the instance of every litigious man.²³ In this jurisdiction, the taxpayer is

¹⁷ The encouragement of private enterprise in the field of education is one of considerations underlying the exemption of educational institutions. To deprive such institutions of making a little surplus from student fees by subjecting all income derived from any and all sources to income tax would destroy all incentive to progress and self-improvement and would invite stagnation.

¹⁸ Sec. 27, par. e, C.A. 466 as amended. See also Sec. 22, Art. VI, Constitution of the Philippines.

¹⁹ *Jeane Sacred Heart College v. Collector*, *supra*.

²⁰ Sec. 27, par. e, C.A. 466 as amended.

²¹ Sec. 27, *supra*.

²² Sec. 305, C.A. 466 as amended; Sec. 54, C.A. 470 as amended; and Sec. 76, R.A. 409.

²³ *State of Tennessee v. Sneed*, 6 Otto 691, quoted in *Churchill and Taft v. Rafferty*, 32 Phil. 580.

afforded adequate remedy to recover taxes illegally or erroneously collected after he has paid under protest²⁴ or has filed a claim for refund.²⁵ Such provisions have been held not violative of the "due process" and "equal protection" clauses of the Constitution.²⁶ However, the existence of exceptional circumstances may take the case out of the general rule and may warrant the issuance by competent authority of a restraining order.²⁷ Under section 11 of Republic Act No. 1125²⁸ the Court of Tax Appeals may suspend the collection of internal revenue taxes or customs duties by summary proceedings when in its opinion, the collection may jeopardize the interest of the Government and/or the taxpayer. The Court of Tax Appeals had occasion to exercise this power in the case of *Aurelio P. Reyes v. Collector*²⁹ when it enjoined the Collector of Internal Revenue from collecting by summary proceedings the deficiency in income tax of the petitions for the years 1946 to 1950. In support of its authority to issue the restraining order, the Court of Tax Appeals held that section 11 of R. A. 1125 has, in effect, amended section 305 of the National Internal Revenue Code in so far as it vests on the Court of Tax Appeals "discretionary power to enjoin the Collector from proceeding with the collection, levy, distraint and/or sale of any property of the taxpayer."

From this case, we may infer that, in order to be entitled to a restraining order, the following conditions must concur: (1) that the taxpayer has filed his tax returns in due time as prescribed by law;

²⁴ Sec. 54, C.A. 470 as amended.

²⁵ Sec. 306, C.A. 466 as amended.

²⁶ *Ayala de Roxas v. City of Manila*, 27 Phil. 336.

²⁷ *Driscoll v. Jones, D.C.*, 19 F. Supp. 792; *Allen v. Regents of the University System of Georgia*, 304 U.S. 439. In the following cases decided by our Supreme Court, that body intimated that the existence of special or exceptional circumstances may justify the issuance of preliminary writ of injunction to restrain the collection of taxes while the case is pending on appeal but failed to explain what fact or set of facts may constitute special or exceptional circumstances: *Churchill and Tait v. Rafferty*, *supra*; *Sarasola v. Trinidad*, 40 Phil. 252; *David v. Ramos*, G.G. No. L-4300 promulgated Oct. 31, 1951R.

²⁸ Par. 2 of sec. 11, R.A. 1125 provides: "No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided, however, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer, the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

²⁹ C.T.A. Case No. 42, promulgated on January 8, 1955. The Collector in this case sought to collect from the petitioner deficiency in income tax for the years 1946 to 1950 by summary proceedings. This is the first case heard by the Court of Tax Appeals where said Court had occasion to apply section 11 of Republic Act No. 1125 regarding the issuance of a restraining order against the Collector of Internal Revenue.

(2) that the tax sought to be collected is an internal revenue tax or custom duty; (4) that the manner of collecting is by summary proceeding either by distraint of personal property or levy on real property; (4) that his interest would be jeopardized;³⁰ and (5) that he has placed on deposit with the Court the amount claimed or he has filed a surety bond for not more than double the amount with the court.

³⁰ The petitioner in the abovementioned case proved that his business would suffer irreparable injury if the Collector would be allowed to distraint his property; on the other hand, the Collector's claim for deficiency could be secured by a deposit or a surety bond.