SURVEY OF 1955 CASES IN TAXATION

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The year 1955 did not produce any radical change in the jurisprudence on the field of taxation although there has been a marked tendency to increase the rates of various internal revenue taxes by legislation. In order to finance the multifarious governmental activities calling for a budgetary outlay of more than a billion pesos, Congress has initiated steps towards raising the government income by increasing the existing rates of various taxes, or extending the applicability of the increased rates of others.[1] As a whole, domestic taxes remained comparatively the same. To maintain our fast dwindling dollar reserve, Congress has repealed Republic Act No. 601 [2] and passed in its stead Republic Act No. 1394, otherwise known as the "Special Imports Tax Law." To restrict the importation of goods for which no dollar has been allocated by the Central Bank, Congress passed Republic Act No. 1410, otherwise known as the "No-Dollar Imports Law."

DOUBLE TAXATION.

Fishpond Owners Subject to Tax on Land and Business.

May the owner of a fishpond, who pays the real property tax thereon, be subject to the payment of a license tax to operate the fishpond? In the case of *People v. Mendaros*,[3] our Supreme Court held in the affirmative and denied the claim of the taxpayer that it is a case of double taxation, on the ground that a license tax may be levied upon a business or occupation although the land or property used therein is already subject to a land tax. Although the same property may not be taxed twice by the same taxing authority [4] yet

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[1] See Rep. Act No. 1274 extending the applicability of the increased rates of income tax on corporations; Rep. Act No. 1335 extending the applicability of the increased rates of income tax for individuals, under Rep. Act No. 590, up to Dec. 31, 1957.

[2] Otherwise known as the "Foreign Exchange Control Act."

[3] G.R. No. L-6975, May 27, 1955.

[4] Double taxation means taxing twice, for the same purpose, in the same year, some of the property in the territory in which the tax is laid, by the same taxing authority without taxing all of it. If all the property in the territory upon which a tax is imposed is taxed twice and for same purpose and in the same year by the same authority without discrimination or preference this is not double taxation in the sense that such taxation is prohibited. 1 COOLEY, TAXATION 394. See also Campbell County v. Newport, 193 S.W. 1, L.R.A. 1917D, 791.

the state may collect an *ad valorem* tax on the property used in the business or occupation and at the same time impose a license tax on the pursuit or privilege of engaging in the business or calling. The real property tax is a tax on ownership while the license tax is imposed on the "privilege of engaging in the calling or of enjoying advantages incident to its exercise."

Municipal Tax on Movie House not a Capitation or Poll Tax.

May a municipal corporation require movie house operators to raise their admission fees and levy and collect a tax on this increase in price of admission? On the authority that such a tax levied by the city ordinance is a tax on the business of operating a movie house, our Supreme Court, in the case of *City of Baguio v. De la Rosa, et al.*,[5] ruled that such a tax is not a capitation or poll tax even though the tax be charged indirectly to the public. The manner the tax may be levied or collected is incidental for it may take the form of a fixed amount or it may be fixed on a percentage basis. The essence of the tax lies in that what is burdened is the business itself, even though it may be an indirect charge to the public.

Are Car Registration Fees Taxes?

Are motor vehicle registration fees taxes? This issue was passed upon by the Supreme Court in the case of *Calalang v. Lorenzo*,[6] in order to determine whether car registration fees may be paid with backpay certificates. The Backpay Law[7] authorizes the issuance of such certificates of indebtedness for the payment of, among others: . . . (2) taxes. Is the motor vehicle registration fee within this provision of the law? In a previous case,[8] the same court held that the words "fees" and "taxes" do not have the same concept, an impost or tax being an enforced contribution assessed on a reasonable rate of apportionment by sovereign authority to defray public expense or burdens imposed to raise money for public purposes, whereas "fees" are the legal compensation or reward of an officer for specific services. In the present case, the Court, in holding that such fees are taxes within the purview of the Backpay Law stated that "the fees are not collected for regulatory purposes" but in collecting such fees, it was for the "express object of providing revenues with which the government is to discharge one of its principal functions

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[5] G.R. No. L-8268, Oct. 24, 1955. See § 2553 of the Rev. Adm. Code.

[6] G.R. No. L-6961, June 12, 1955.

[7] See Rep. Act No. 304, § 2.

[8] See Manila Electric Company v. Auditor General and Public Service Commission, 73 Phil. 128 (1941).

—the construction and maintenance of public highways for everybody's use." The registration fees of motor vehicles are therefore collected for revenue purposes and not only for the purpose of meeting the expenditures of the Motor Vehicle Office.

INTERNAL REVENUE TAXES.

Compensating Tax: Vessels Purchased From Abroad Not Subject to Tax.

All persons residing or doing business in the Philippines who purchase or receive from without any commodities, goods, wares or merchandise not subject to specific taxes, shall pay a compensating tax thereon, such tax to be paid upon the withdrawal or removal of such commodities, goods, wares or merchandise from the customhouse.[9] In the case of *North Camarines Lumber Co. v. David*,[10] the plaintiff-taxpayer purchased prior to June 9, 1949 from the Foreign Liquidation Commission various vessels for its use in its business. The vessels were acquired from abroad; hence the respondent Collector levied and collected the compensating tax. In upholding the right of the taxpayer to a refund, the Court held that the phrase "commodities, goods, wares or merchandise" shall not be construed to include vessels, their equipment and/or appurtenances purchased or received from without, before or after the taking effect of Republic Act No. 361.[11] Vessels and their appurtenances are not subject to compensating tax.

Gift Tax: Donation of Property Belonging to the Conjugal Partnership.

Is the donation of community property by the father alone equivalent in law to a donation of one half of its value by the father and one half by the mother? In the case of *Tangho, et al. v. Board of Tax Appeals*,[12] the petitioner (who were the donor and donees) claimed that such donations of community property should be regarded for tax purposes as donations by both spouses, for which separate exemptions may be claimed in each instance—one for each

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[9] § 190, Com. Act No. 166 (The National Internal Revenue Code).

[10] 51 O.G. 4, 1860 (1955).

[11] Although the Court upheld the right of the taxpayer to a refund, yet recovery of the taxes paid was not obtained because the claim was presented beyond the prescriptive period of two years as prescribed by § 306 of the National Internal Revenue Code. § 306 limits the right to recover taxes erroneously or illegally collected to two years from the date of payment.

[12] G.R. No. L-5949, Nov. 19, 1955, 51 O.G. 11, 5600 (1955).

spouse.[13] In holding that the donation of property belonging to the conjugal partnership, made during its existence by the husband alone in favor of the common children, is taxable to the father exclusively as sole donor, the Court construed Articles 1409 and 1415 of the old Civil Code.[14] In effect, these articles refute the petitioners claim: first, because the law clearly differentiates donations of such property "by the husband" from "donations by both spouses by common consent;" and second, the wordings of said Articles 1409 and 1415 indicates that lawful donations by the husband of the community property to the common children are valid and chargeable to the conjugal partnership irrespective of whether the wife agrees or objects. Obviously, if the wife objects to such a donation, she cannot be regarded as a donor. Further, the consequence of the husband's legal power to donate community property is that, where made by the husband alone, the donation is taxable as his own exclusive act; hence only one exemption or deduction can be claimed for every gift.

Gift tax: Donor's Tax Not Deductible From Gift in Determining Donee's Tax.

In the determination of the donee's gift tax, should the donor's tax be deducted?[15] The donor's tax is levied on the act of transferring or giving[16] while the donee's tax is levied on the act of receiving the gift.[17] When a person transfers property or property right

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[13] Under § 110 of the National Internal Revenue Code, such portion of the gifts in favor of a spouse, or a legitimate, recognized natural, illegitimate or adopted child of the donor, who is a citizen or resident of the Philippines, which is not in excess of ₱5,000 shall be exempt from the gift tax. § 112 of the same Code provides that dowries or gifts made on account of marriage and before its celebration or within one year thereafter by parents to each of their legitimate, recognized natural, or adopted children to the extent of the first ₱10,000 shall be exempt.

It is the theory of the petitioners that the gifts should be split into two—one half coming from the father and one half coming from the mother, and then claim exemptions under the above mentioned provisions of the Code on the separate gifts from the father and from the mother. The purpose is to split up the total amount of the gifts and bring it down within the exemption provisions.

[14] The Court applied Articles 1409 and 1415 of the old Civil Code because the governing law during the years when the gifts were made, 1939 to 1950, was still the old Code. The pertinent provisions of the new Civil Code are Arts. 162 and 171.

[15] Under the Internal Revenue Code, the "estate tax" is deductible from the "net estate" in computing the inheritance tax to be paid by the heirs or legatees. Query: Can you apply the same rule with respect to gift tax where the law is silent?

[16] § 108 of the same Code provides that a gift tax shall be levied, assessed, collected and paid upon all transfers by an individaul, resident or non-resident, by gift as provided in § 109.

[17] § 110 of the same Code provides that, in addition to the gift tax imposed under § 108 there shall be levied, assessed, collected and paid a gift tax on the aggregate sum of the net gifts received by the donee.

by gift or any act not amounting to a transfer for a consideration in money or money's worth, the transfer is taxed twice: first, on the donor and second, on the donee. In receiving the gift, is the donee entitled to deduct the donor's tax in order to compute his tax liability? In the case of *Maria Elizabeth Kiene, et al. v. Collector of Internal Revenue,*[18] the Court held that there is nothing in the law requiring the donor's tax to be discounted from the donation; on the other hand, both taxes are assessed on the aggregate sum of the gifts. It follows that the donor's tax is not deductible. This does not necessarily diminish the gift received by the donee because there is no legislative indication that the donee shall pay less than the donor.

Estate and Inheritance Tax: Non-resident Aliens Exempt Under Rule of Reciprocity.

If a non-resident alien dies leaving property, real or personal, in the Philippines, are estate and inheritance taxes due from his estate? Under the Internal Revenue Code, an estate tax [19] is levied, assessed, collected and paid upon the transfer of the net estate of every decedent, whether resident or non-resident; and an inheritance tax [20] is levied, assessed and collected on every individual share of each heir or legatee in the net estate of the decedent, resident or non-resident, after deducting the amount of the estate tax. These taxes maybe levied only on properties subject to the taxing jurisdiction of the Philippines, and does not include properties situated outside the Philippines.[21] In the same case of *Kiene, et al. v. Collector of Internal Revenue.*[22] the Court held that although as a general rule a non-resident alien who dies seized of property within the Philippines shall be subject to the estate and inheritance taxes, such tax, however, shall not be collected in respect to intangible personal property (a) if the decedent at the time of his death was a resident of a foreign country which at the time of his death did not impose a transfer tax or death tax of any character in respect of intangible personal property of citizens of the Philippines not residing in that foreign

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[18] G.R. Nos. L-5974 and 5979, July 30, 1955.

[19] See § 85, National Internal Revenue Code.

[20] See § 86, *id.*

[21] § 88, *id.* In the determination of what shall constitute the gross estate of a decedent, real property situated outside the Philippines are excepted. Applying Article 16 of the new Civil Code, personal property the situs of which is outside the Philippines should also be excepted from the gross. The rule excepting such properties is based on the fact that the taxing authority acquires no jurisdiction over them.

[22] See G.R. No. L-5974, July 30, 1955. In the present case, the decedent was a citizen of and resident, at the time of his death, of the state of Liechtenstein. He left shares of stock of a domestic corporation which the Collector assessed for estate and inheritance taxes.

country; or (b) if the laws of the foreign country of which the decedent was a resident at the time of his death allow a similar exemption from the transfer taxes or death taxes of every character in respect of intangible personal property owned by citizens of the Philippines not residing in that country.[23] Under this reciprocity rule, a non-resident alien who dies seized of property, real or personal, within the Philippines is exempted from the estate and inheritance tax.

Real Estate Dealer's Tax: Who are Subject To Pay Said Tax.

In the case of *Veronica Sanchez v. Collector*,[24] the Supreme Court held that the owner of a four-door "accessoria" building who occupies one of the apartments and rents the rest is a real estate dealer because the kind and nature of the building constructed shows that it was intended for rent or profit. The fact that the owner occupies one of the apartments as a residence is immaterial as long as the purpose of constructing the building is to rent it and is in fact leased for profit. However, in another case, *Imperial v. Collector*,[25] the same Court held that the owner of a nine-door camarin who leases the same to merchant-tenants is not a real estate dealer because he is not engaged in the business of leasing real estate. Under the circumstances of the case, the act of the owner in leasing his camarin was an isolated transaction.[26] In the light of the new provisions of section 194, paragraph (s), of the IRC as amended by Republic Act No. 588,[27] the ruling laid down in the latter case would

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[23] § 122 of the National Internal Revenue Code. The Court found that the laws of Liechtenstein do not impose estate, inheritance and gift taxes on intangible personal property of Filipino citizens not residing in that country.

[24] 51 O.G. 10, 5130 (1955). The case involves the payment of real estate dealer's tax due in 1946 to 1950. The applicable provision of the Internal Revenue Code was: § 194, par. (s), defines a real estate dealer as including "all persons who for their own account are engaged in the sale of lands, buildings or interests therein or in leading real estate . . ."

[25] G.R. No. L-7924. Sept. 30, 1955.

[26] The Court considered the following circumstances: (1) the camarin appears to be the only property of the taxpayer for lease; (2) the rental received therefrom is much less than the annual income received by taxpayer from his office; (3) the taxpayer was, at the time in question, a Minister in a foreign country. Viewed with these in mind, the taxpayer was, according to the Court, not engaged in leasing real estate.

[27] § 194, par. (s) of the Internal Revenue Code as amended by R.A. 588 provides: ". . . . Real estate dealer includes any person engaged in the business of buying, selling, exchanging, leasing, or renting property on his own account as principal and holding himself out as a full or part-time dealer in real estate or as an owner of rental property or properties rented or offered to rent for an aggregate amount of ₱3,000 or more a year: Provided, however, That an owner of sugar lands subject to tax under C.A. No. 567 shall not be considered as a real estate dealer."

no longer be applicable if the owner of the property rents or offers the same for rent for an aggregate amount of three thousand pesos or more annually.

Percentage Tax: Neon Tube Signs Subject to Tax on Manufacturer or Producer.

If an advertising firm produces or manufactures neon tube signs upon orders of advertisers and for use in its advertising business, is it subject to the payment of the percentage tax? In the case of *Advertising Associates, Inc. v. Collector*,[28] the petitioner-taxpayer claim that (1) it is only a contractor, not a producer, of neon tube signs for the reason that it makes them only by special contract and upon previous orders of advertisers; and (2) it should be considered a publisher because the neon signs made by it really publish a product or a business.[29] The Court held that the petitioner is subject to the tax because when section 185 of the IRC was amended increasing the rates from 10%, then 15% and finally 30%,[30] the Legislature had in mind and did refer to signs and devices being made and manufactured upon previous order such as those manufactured by the petitioner. The tax was levied not so much on their manufacture but on their eventual sale to the public and customers who ordered them.[31]

Municipal Taxation: Is a Producer or Manufacturer a "Wholesaler?"

In the case of *Central Azucarera de Don Pedro v. City of Manila*,[32] the city government levied and collected from the plaintiff certain sums as taxes due plaintiff as wholesale dealer and retailer

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[28] G.R. No. L-6553, Sept. 30, 1955.

[29] § 185 of the IRC provides: "Percentage tax on sales of automobiles, sporting goods, refrigerators, and others:—There shall be levied, assessed and collected only once on every original sale, barter, exchange, or similar transaction intended to transfer ownership of, or title to, the articles herein below enumerated, a tax equivalent to 30 per centum of the gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer, producer or importer: . . . . (k) Neon-tube signs, electric signs and electric advertising devices."

§ 191, IRC provides for a percentage tax of 3 per centum on the gross receipts of, among others, publishers.

[30] § 185 has been amended several times by Republic Acts Nos. 41, 217, 588 and 594. The present rate is 30 per centum.

[31] The Court said that in so far as there is no person or firm engaged principally in the mass production or manufacture of neon signs and other electrical devices in the Philippines for sale to the public, the Legislature, in adopting such a measure, intended to tax those who produce or manufacture them upon orders of customers.

[32] G.R. No. L-7679, Sept. 29, 1955. The City Government levied and collected a municipal tax on wholesale dealers under Mun. Ordinance No. 3420 and a retailers tax under Mun. Ordinance No. 3364. The plaintiff owns and operates a sugar

of refined sugar. The issue was: If the manufacturer or producer of goods enters into contracts of sale of its produce at its own shop, manufactory or central office but does not keep a store or warehouse purposely for selling, is it a dealer? In denying the contention of the city government that the plaintiff is a wholesale dealer [33] in sugar, the Court held that the plaintiff did not carry on the business of selling sugar at stores or at its warehouse; neither does it appear that the plaintiff keeps stores at its warehouse and engages in selling sugar in said stores. Instead it entered into contracts of sale at its central office at Manila and made deliveries from its warehouse at the place of manufacture straight to customers.

Percentage Tax: Purchaser of Surplus Goods from Army Base.

Is a purchaser of surplus goods from a U.S. Army base in the Philippines subject to a percentage tax under Sections 185 and 186 of the Internal Revenue Code if he sells the same? In the case of *Andres Soriano y Cia. v. Collector*,[34] the Court held that such purchaser is subject to a percentage tax on his gross sales. One who acquires title to surplus equipment found in U.S. Army bases within the Philippines by purchase and who brings them out of those bases or depots, is an importer and sales made by him of such surplus goods are taxable under Sections 185 and 186.[35]

Remedies: Injunction to Restrain Distraint or Levy on Real Property.

In the case of *Jose Yulo v. Araneta*,[36] the Court of Tax Appeals issued a writ of injunction to restrain the Collector of Internal Revenue from collecting the deficiency in income taxes and surcharges by summary proceeding. Applying section 11 of Republic Act No. 1125, the Tax Court found that the appeal is warranted in fact and in law; it is not intended to delay the collection of taxes because the

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central at Nasugbu, Batangas, and manufactures refined sugar at its central. In 1950 and 1951, plaintiff sold and delivered several quantities of sugar to San Miguel Brewery. These deliveries are what was taxed by the city.

[33] A "dealer" is defined as "a person who makes a business of buying and selling goods, especially as distinguished from a manufacturer, without altering their condition. . . . See Webster's International Dictionary. In the case at bar, plaintiff receives sugar cane which it mills and converts the same into sugar. In making the sale of sugar it manufactures it maybe liable to a manufacturer's tax.

[34] 51 O.G. 9, 4548 (1955).

[35] § 185, Internal Revenue Code, *supra*.

§ 186, Internal Revenue Code, provides for the levy and collection of a percentage tax of 7 per centum once only on every original sale, barter, exchange and similar transaction involving articles not enumerated in §§ 184 and 185, IRC.

[36] Court of Tax Appeals Case No. 84, Feb. 21, 1955.

taxpayer is willing to furnish the bond; and that there is a possibility that should the case be tried on the merits, the deficiency in income taxes might be considerably reduced.[37]

Jurisdiction: Exclusive Appellate Jurisdiction of the Court of Tax Appeals to Review Decisions of the Customs Authorities.

In the case of *Millarez v. Judge Amparo*,[38] several importers of garlic filed petitions for mandamus with the Court of First Instance of Manila to compel the Collector of Customs to deliver to them certain goods impounded by the customs authorities for failure to present release certificates from the Central Bank.[39] The CFI issued the writ of mandamus; hence the present action to dissolve the writ. The Supreme Court in dissolving the writ held that the CFI has no authority to entertain the complaints of the importers because they were in reality petitions to review actuations of the customs authorities, which is now exclusively reviewable by the Court of Tax Appeals. Section 7, Republic Act No. 1125 gave to the Court of Tax Appeals exclusive appellate jurisdiction to review on appeal decisions of the Commissioner of Customs involving "seizure, detention or release of property affected or other matters arising under the Customs Law or other law administered by the Bureau of Customs." This provision has taken away the power of the Court of First Instance "to review" decisions of the customs authorities "in any case of seizure."

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[37] Under § 11, Rep. Act No. 1125, the Tax Court may, at any stage of the proceeding, suspend the collection, by distraint or levy on real property, of any internal revenue tax or customs duty if the collection may jeopardize the interest of the Government and/or the taxpayer provided that the taxpayer files a surety bond. In the present case the taxpayer proved to the satisfaction of the tax court that his interest would be jeopardized.

[38] 51 O.G. 7, 3462 (1955).

[39] Circular No. 45 of the Central Bank requires certificates from said importers of certain goods to obtain release certificates from said Bank before demanding delivery of goods from the customs house.