TAXATION

MARIA CLARA LOPEZ-CAMPOS *

The last year saw quite a number of Supreme Court decisions on taxation. Although many of them merely reiterate principles laid down in previous cases, some involve new and significant doctrines. For purposes of convenience and clearer understanding, this survey has been divided into several topics covering the different taxes discussed in the cases. And although cases on municipal taxation have a very limited field of application, it is believed that a survey of tax decisions would not be complete without them. These cases have therefore been included as the last topic in this year's survey.

A. REAL PROPERTY TAX

Under Section 2 of the Assessment Law,[1] the real property tax is assessed on all real property, including not only land, buildings and machinery, but also other improvements not specifically exempted under said law. Thus, a newly-constructed road is an improvement[2] on which the real property tax may be properly assessed.

The rule that real property tax, being a burden upon capital, should be paid by the owner of the land and not by the usufructuary thereof,[3] was reiterated in the case of *Bislig Bay Lumber Co., Inc. v. Provincial Government of Surigao.*[4] Thus, if the real property subject of the assessment belongs to the government, which is exempt from tax, the fact that it is leased to a private firm does not make the latter liable for such tax,[5] unless the lease agreement provides otherwise.[6] In the *Bislig* case, the petitioner constructed a road on the timber concession granted to it by the government. The Supreme Court held that since by right of accession, the road would ultimately pass to the government upon the expiration of the concession, the petitioner was not liable for the real property tax. Furthermore, the court noted the fact that although the road was constructed primarily for the petitioner's use, the privilege is not exclusive since under the lease contract, its use can also be availed of by the public in general.

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* LL.B. (University of the Philippines); LL.M. (Yale). Assistant professor, College of Law, University of the Philippines.

1 Com. Act No. 470, which does not apply to chartered cities.

2 See Bislig Bay Lumber Co., Inc. v. Prov. Government of Surigao, G.R. L-9023, November 13, 1956.

3 Mercado v. Rizal, 67 Phil. 608.

4 *Supra.*

5 Bislig Bay Lumber Co. v. Prov. Gov't of Surigao, *supra.*

6 Manila Trading & Supply Co. v. City of Manila, 45 Phil. 400.

B. INTERNAL REVENUE TAXES

1. INCOME TAX

(a) *What is income*

Gross income is defined by Section 29 (a) of the National Internal Revenue Code as "gains, profits, and income derived from salaries, wages, or compensation for personal service of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interests, rents, dividends, securities, or gains, profits, and income derived from any source whatever." Under this definition, income does not include all receipts, as the former is limited to *gains and profits.* Neither does it include capital, for "capital is a tree, income, the fruit."[7] And an income tax can be levied only on income, or increment of wealth realized by conversion of capital or by its use in conjunction with labor, and not on original capital.[8] Thus, in the case of *Collector of Internal Revenue v. Philippine Educational Co.,*[9] our Supreme Court held that war damage payments are not income, since they constitute merely compensation for injury to capital.[10]

(b) *Allowable deductions*

The tax is imposed on net income, which is gross income less allowable deductions.[11] Deduction is allowed in case of individuals for all losses arising from fires, storms, shipwreck or other casualty and, in case of a corporation, for all losses actually sustained and charged off within the taxable year and not compensated for by insurance or otherwise.[12] In the case of *Emilio Hilado v. Collector of Internal Revenue and Court of Tax Appeals,*[13] the petitioner deducted from his gross income for 1950, the portion of his war damage claims which remained unpaid at the time he received a notice from the War Damage Commission that no further payment would be made on such

[7] Madrigal & Paterno v. Raffery & Concepcion, 38 Phil. 414.
[8] Comm. of Internal Rev. v. Fleming, 82 Fed. 2d 324.
[9] G.R. L-8505, May 30, 1956.
[10] In this case, the court held that Rep. Act 227 in exempting war damage payments from the income tax, is mere surplusage. In this connection, it should be noted that tax courts have held that income excludes receipts in the form of damages not only for injuries to property or for physical injuries, but also damages by way of compensation for invasion of rights or violation of duties, such as damages for libel or slander, and damages for wrongful legal advise. See Clark v. Commissioner, 40 BTA 333).
[11] In case of income tax paid by natural persons, there is a further deduction of the personal and additional exemptions.
[12] See §30 (d) (1) and (2), National Internal Revenue Code.
[13] G.R. L-9408, October 31, 1956.

claims. Since the notice was received in 1950, the petitioner claimed that the deduction should be allowed in that year on the theory that his war damage claim was a "business asset", and whatever part of it which was not paid under the above notice, was a loss which was suffered during that year. The Supreme Court, however, held that the amount of a war damage claim, though approved by the War Damage Commission, is not "business asset" the loss of which can be deducted in contemplation of law because its collection is not as a matter of right, but is merely dependent on the generosity and magnanimity of the United States Government.[14] Since the amount claimed does not represent a deductible loss in 1950, it is clear that the loss of the corresponding asset or property could only be deducted in the year it was actually sustained, in line with Section 30 (d) of the National Internal Revenue Code. The loss was therefore deductible from income earned in 1945, when the damages actually took place, and not from income earned in 1950, when notice of further non-payment of the war damage claim was received.

However, a loss is not deductible if compensated for "by insurance or otherwise".[15] In the case of *Cu Unjieng Sons, Inc. v. Board of Tax Appeals and Collector of Internal Revenue*,[16] the Supreme Court explaimed the meaning of said phrase. "Otherwise", according to the Court, should be construed to refer to compensation due under a title analogous or similar to insurance. Inasmuch as the latter is a contract establishing a legal obligation, it follows that in order to be deemed "compensated for...otherwise," losses sustained by the taxpayer must be covered by a judicially enforceable right, springing from any of the juridical sources of obligations, namely: contract, quasi-contract, torts or crime.[17] There has never been any case, the Court observed, in which the words "or otherwise" in the income tax law have been held to include the hope, or even, the moral certainty, that a proposed legislation — authorizing payment of an indemnity not due, either under the general principles

[14] Under the Philippine Rehabilitation Act of 1946, the payments of claims by the War Damage Commission merely depended upon its discretion, to be exercised in the manner it may see fit, but the non-payment of which cannot give rise to any enforceable right.

[15] See §30 (d) (2), National Internal Revenue Code.

[16] G.R. L-6296, September 29, 1956.

[17] The Court cited the following examples: when the taxpayer is indemnified against loss by a third party guaranty or by an insurance policy; or when the guilty party is bound to indemnify said loss, it being the result of a breach of contract; or when the damages resulting from one phase of a given transaction are offset by the benefits derived from another phase of the same transaction.

of law, or under any particular statute—would eventually be approved.[18]

In the case of *Collector v. Philippine Education Co., supra* the Supreme Court explained that whether an expense of a taxpayer is deductible or not, depends on whether or not the following conditions are present: (1) the expense must be ordinary and necessary; (2) it must be paid or incurred within the taxable year; and (3) it must be paid or incurred in carrying on a trade or business.[19] If all these three conditions are present, then it is a deductible expense. In this case, the Collector disallowed fees paid by the company to an accounting firm for preparing its war damage claim, on the ground that the fees were not incurred in the kind of business transactions in which it was normally and customarily engaged. The Court however, brushed aside this contention of the Collector saying that, to carry on its business, a corporation not only must have sufficient assets but must preserve the same and recover any that should be lost. The fee in question was paid to recover the company's lost assets — occasioned by the war, and thereby to rehabilitate it as to be able to carry on its business. The Court quoting Mertens, said: "Ordinarily, an expense will be considered necessary where the expenditure is appropriate and helpful in the development of the taxpayer's business; it is sufficient that the expense was incurred for purposes proper to the conduct of the corporate affairs or for the purpose of realizing a profit or of minimizing a loss; the term 'ordinary' as used in these statutes does not require that the payment be habitual or normal in the sense that the same taxpayer will have to make them often; the payment may be unique or non-recurring to the particular taxpayer affected."

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[18] The facts of this case is similar to the case of Hilado v. Collector, *supra*. Cu Unjieng & Sons, Inc. claimed as a deduction from their gross income in 1950, the portion of their war damage claim which the War Damage Commission announced it would no longer pay. The company claimed that such amount could not be legally deducted from its income for 1945 (the year when the loss of the property actually took place), as the Collecter wanted, because such loss was at the time compensated under the Philippine Rehabilitation Act authorizing the payment of war damage claims. Aside from the fact that said Act was not approved until April, 1946, the Court said that said Act did not create a legal obligation, either express or implied, to pay war damage claims. As in the case of Hilado, the Court held that the loss is deductible from income earned in 1945.

[19] §30 of the National Internal Revenue Code in part provides: "In computing net income there shall be allowed as deductions—

(a) *Expenses:*

(1) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered;......"

(c) *Exemption of educational institutions*

Under Secion 27 (c) of the National Internal Revenue Code, corporations or associations organized and operated exclusively for educational purposes is exempt from income tax, provided that no part of the net income of such institution inures to the benefit of any private stockholder or individual. This provision is applicable to all educational institutions coming within the requirements of the provision, even if the operations of such institutions should result in a surplus, for otherwise, the exemption would be limited to schools which are on the verge of bankruptcy, and would run counter to the objective of the law in encouraging the establishment of colleges in the Philippines.[20]

In the case of *Collector of Internal Revenue v. V. G. Sinco Educational Institution*,[21] the respondent was a non-stock corporation which operated the Foundation College of Dumagute. The Collector of Internal Revenue imposed a tax on its net income for the years 1950 and 1951 on the ground that the books of the corporation showed that part of its net income inured to the benefit of its president and founder. The balance sheets of the corporation for said years contained entries showing that certain amounts were due to the president for salaries as teacher and for cash advanced by him. There were also entries showing that certain amounts for services rendered were due to another corporation, of which the president of the educational institution was a principal stockholder. Since its organization, the respondent corporation never distributed any dividend or profit to its stockholders. Instead, it used part of its income in acquiring additional buildings and equipment, which according to the collector, enhanced the value of the properties of the corporation, which may be sold at any time and the profits divided among its members.

In declaring the respondent exempt from the income tax, the Supreme Court held that whatever payment is made to those who work for a school or college as remuneration for their services is not a distribution of profit as would make the school one conducted for profit. Much less can it be said, according to the court, that payments made by the college to the other corporation, redounded to the benefit of its president simply because he is one of the latter's

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20 Jesus Sacred Heart College v. Collector, G.R. L-6807, May 24, 1954.
21 G.R. L-9276, October 23, 1956.

stockholders.[22] And while the acquisition of additional facilities may redound to the benefit of the institution itself, it cannot be positively asserted that the same will redound to the benefit of the stockholders, for no one can predict the financial condition of the institution on its dissolution. At any rate, the mere provision for the distribution of its assets to the stockholders upon dissolution does not remove the right of an educational institution to tax exemption, provided the corporation is not a scheme to avoid taxation and its good faith and honesty of purpose is not challenged.[23]

(f) *Proof of exemption*

Although Section 24 of the Revenue Regulations No. 2 requires the filing of proof of exemption[24] by the institution claiming exemption from the income tax, such proof is not a condition precedent before an institution can avail itself of the exemption.[25] The requirement is intended to relieve the taxpayer of the duty of filing returns and paying the tax, and therefore it cannot be said that the failure to observe such requirement constitutes a waiver of the right to enjoy the exemption; a contrary interpretation would be tantamount tó incorporating into our tax laws some legislative matter by administrative regulation.[26]

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22 Would not this pronouncement, although it may be true in this particular case discussed, open the door to a situation where an individual could avoid the income tax by organizing a non-profit, non-stock educational corporation, and channel the bigger portion of its income to another corporation of which the individual would also be a stockholder, and which could be made a stock, and therefore, profit-making corporation? Of course, if this should actually happen, the court can "pierce the veil of corporate entity" on the ground that the purpose for which the second corporation was formed was fraudulent and illegal, in which case no exemption can lie.

23 Here, no such challenge was made by the Collector. On the other hand it was shown that the Foundation College was originally established and operated not by a corporation but by an individual, who later had to form a non-stock corporation to comply with the requirement of the Department of Education that as far as practicable schools and colleges should be incorporated.

24 "Sec. 24. *Proof of exemption.*—In order to establish its exemption, and thus be relieved of the duty of filing returns of income and paying the tax, it is necessary that every organization claiming exemption file an affidavit with the Collector of Internal Revenue, showing the character of the organization, the purpose for which it was organized, its actual activities, the sources of its income and its disposition, whether or not any of its income is credited to surplus or inures or may inure to the benefit of any private shareholder or individual, and in general, all facts relating to its operations which affect its right to exemption. To such affidavit should be attached a copy of the charter or articles of incorporation, the by-laws of the organization, and the latest financial statement showing the assets, liabilities, receipts, and disbursements of the organization....." Revenue Regulations No. 2.

25 Collector v. V. G. Sinco Educational Institution, *supra.*

26 *Ibid.*

2. WAR PROFITS TAX

The War Profits Tax Law imposes a tax on the increase of net worth[27] of an individual, partnership, company or corporation between December 8, 1941 and February 26, 1945. In the case of *Testate Estate of Olimpio Fernandez, Republic of the Philippines v. Angelina Casan, et al.*,[28] our Supreme Court had occasion to justify the law imposing this tax. It was alleged by the respondent that the law is unconstitutional since not only is it retroactive in its application, but it is also harsh and oppressive. After holding that a tax law may expressly provide for its retroactivity,[29] the Court decided that the tax is neither harsh nor oppressive because its impact fell on those who had amassed wealth or increased their wealth during the war, but did not touch the less fortunate. After the war, according to the Court, the Legislature could not, with justice to all concerned, apportion the expenses of government equally on all the people irrespective of the vicissitudes of war, equally with those who had their properties decimated as on those who had become fabulously rich after the war.

As to whether the war profits tax may be imposed on the estate of a deceased person who would have had to pay it were he alive, the court in the same case held that taking together Section 9 of the War Profits Law[30] and Section 84 of the National Internal Revenue Code,[31] the estate left by the deceased should be subject to tax in the same manner as if he were alive. And as far as the estate of the deceased is concerned, the tax is both a property tax and a tax on income. It is a property tax in relation to the properties which he

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27 "Sec. 2. *Determination of net worth.*—The term "net worth" as used in section 1 of this Act shall mean the value of assets, including real and personal property and/or cash in banks (exclusive of amounts received during the period from December 8, 1941 to February 26, 1945 as proceeds of life insurance policies issued on or before December 31, 1941), credits interests and rights (exclusive of war damage claims and other claims against the Government of the Republic of the Philippines and Foreign governments, or their instrumentalities), less liabilities incurred in carrying on a trade or business or in acquiring property;. . . ." Republic Act No. 55, An Act to Impose a War Profit Tax.

28 G.R. L-9141, September 25, 1956.

29 The Court cited Mekin v. Wolfe, 2 Phi. 74 and Ongsiako v. Gamboa 47 O.G. No. 11, 5613, to the effect that the prohibition against *ex post facto* laws applies only to criminal or penal matters, and not to laws which concern civil matters or proceedings generally, or which affect or regulate civil or private rights.

30 "Sec. 9. *Administrative remedies.*—All admiinstrative, special and general provisions of law inculing the laws in relation to the assessment, remission collection and refund of national internal revenue taxes, not inconsistent with the provisions of this Act, are hereby extended and made applicable to all the provisions of this law, and to the tax herein imposed." R.A. 55, or War Profits Tax Law.

31 "Sec. 84. *Definitions.*—When used in this Title—

(a) The term "person" means an individual, a trust, *estate*, corporation, or a duly rgistered general copartnership." (Italics ours) National Internal Revenue Code.

had in December, 1941; and it is an income tax in relation to the properties which he purchased during the Japanese occupation.

3. ESTATE TAX

The estate tax is imposed on the right of the decedent to transmit his property, and its amount is graduated according to the value of the net estate left by the decedent. The policy consideration behind this tax is to encourage the distribution of large estates and to prevent the concentration of wealth in the hands of a few families. The value of all properties of a deceased resident, therefore, whether real or personal, tangible or intangible, is subject to the tax, the only exception being the value of real property situated outside the Philippines.[32] In line with this exception, in determining the net estate of the deceased, in order that an indebtedness with respect to property may be allowed as a deduction from the gross estate, the value of the decedent's interest in said property, undiminished by said indebtedness must be included in the value of the gross estate. Thus, a mortgage claim against the property of the deceased located in Spain is not deductible from the gross estate for the purpose of determining the value of the net estate subject to the estate tax, since said property does not form part of the gross estate for said purpose.[33]

4. GIFT TAX

While the estate tax is imposed on the decedent's right to transmit, a gift tax is imposed on the transfer of property by gift *inter vivos* without relation to the debt of the donor. And since the purpose of the gift tax is to prevent or compensate for the withdrawal of property by gifts *inter vivos* from the operation of the estate or inheritance tax,[34] as a general rule, the law imposing gift tax and the law imposing estate and inheritance taxes should be construed in conjunction with each other.[35] This rule, however, cannot apply in cases where the law clearly strikes a difference between the two taxes. In the case of *Collector of Internal Revenue v. Soriano de Vicuña*,[36] the Court reiterated the principle laid down in *Kiene v. Collector*[37] and held that the donor's tax is not deductible from the value of the donation for the purpose of computing the gift taxes payable by the donee.[38] In the absence of an agreement or an express

[32] See §88 National Internal Revenue Code.
[33] Intestado de Don Valentin Descals v. Administrador de Rentas Internas, G.R. L-7253, March 26, 1956.
[34] 28 AM. JUR. 149.
[35] Sanford v. Commissioner of Int. Rev. 308 US 39.
[36] G.R. L-8499, 85k4, 8514, May 21, 1956.
[37] G.R. Lo-5794 & L-3997, July 30, 1955.
[38] See §110 Nat. Int. Rev. Code.

provision in gift tax to that effect, the court refused to apply by analogy the provision that the estate tax is to be deducted from the net estate, before computing the inheritance tax due from each heir.[39] The Court pointed out the difference between the estate and gift taxes: The estate tax must necessarily be paid from the estate, thereby reducing it; whereas the donor's tax is or may be paid by, or collected from the donor, who must be presumed to have reserved unto himself sufficient property to pay the donor's tax. The gift received by the donee is thus not necessarily diminished by the payment of the donor's tax. Should the donee pay the donor's tax, said act, according to the Court, should be an act done for and on behalf of the donor entitling the donee to demand reimbursement of the sum paid; hence, the donee may not claim that the payment has reduced his beneficial interest in the property donated.

5. SPECIFIC TAX

An ordinance which imposes a fee of 1/10 centavo per liter on the sale of gasoline and 1/2 centavo per liter on the sale of alcohol, gas or petroleum, is not taxing the business of selling gasoline, alcohol, gas or petroleum, but is imposing a specific tax on said articles. A tax which imposes a specific sum by head or number, or some standard or measurement and which requires no assessment beyond the listing and classification of the objects to be taxed, is a specific tax.[40] The tax in question therefore is clearly a specific tax.[41]

6. PERCENTAGE TAX

The percentage tax is a form of business tax imposed on the privilege of engaging in some business, and is paid by the person, firm or company conducting the same.[42] Its amount is measured by the receipts from such business or activity, and the tax is based on a given *ratio* between the gross income and the burden imposed upon the taxpayer. It is different from a graduated tax, which

[39] "Sec. 86. *Rates of inheritance tax.*—In addition to the estate tax imposed by section eighty-five, there shall be levied, assessed, collected and paid an inheritance tax equal to the sum of the following percentages of the value of the individual share of each heir or beneficiary in the net estate, *after deducting the amount of the estate tax, of every decedent*, whether a resident or non-resident of the Philippines:....." (italics ours)

[40] As contrasted with *ad valorem tax*, which necessitates the intervention of assessors because the amount of the tax is a fixed proportion of the value of the property.

[41] We Wa Yu v. City of Lipa, G.R. L-9107, September 27, 1956. The court held that the ordinance was void because under its charter, the city had no power to levy a specific tax.

[42] See §128 Nat. Int. Rev. Code.

although it also depends on the amount of gross sales or receipts, fixes a definite amount as the tax liability and not merely a ratio or percentage.[43]

(a) *Sales Tax*

The percentage sales tax is levied once only on every original sale, barter, exchange or similar transaction for nominal or valuable consideration, intended to transfer ownership of, or title, to the articles subject of the tax. The amount of the tax consists of a certain percentage of the "gross value in money" of the articles, the percentage varying with the nature of the articles — whether luxuries, semi-luxuries or nonluxuries. The tax is paid by the manufacturer or producer or importer of the articles.[44] The "gross value in money" or the actual selling price is the sum stipulated as the equivalent of the thing sold and also every incident taken into consideration for the fixing of the price, put to the debit of the vendee and agreed to by him.[45] The Supreme Court had occasion to apply this rule in the case of *Insular Lumber Co. v. Collector of Internal Revenue*,[46] where the plaintiff sold lumber to a buyer in Japan. The lumber was shipped from Fabrica, Occidental Negros to Manila, where it was placed on board a vessel bound for Japan. The plaintiff paid for the freight charges from Fabrica to Manila, and the stevedoring charges for loading the lumber on the steamer bound for Japan. In billing the buyer, the plaintiff included the freight and stevedoing charges, but carried them as items separate from the selling price of the lumber. The collector collected the sales tax on the gross selling price, including both the freight and stevedoring charges. Plaintiff claimed that these were not part of the selling price but were paid by it and charged to the buyer, for the convenience of the buyer, and that it did not make any profit on these two items and therefore they could not form part of the selling price. Under the written contract of sale, the lumber was to be delivered to the buyer only when it was placed on the vessel which would carry it to Japan. The Court held that under such terms, the intention of the parties must have been to include in the selling price the freight and stevedoring charges, and that therefore, the Collector did not make an erroneous collection. The Court further held that the mere fact that the company made no profit on these two

[43] City of Manila v. The Interisland Gas Service, G.R. L-8799, August 31, 1956. A tax of 7% of the gross receipts is a percentage tax. A tax of ₱100 if the sales exceed ₱10,000 but do not exceed ₱50,000; ₱200 if the sales exceed ₱50,000 but do not exceed ₱75,000 is a graduated tax.

[44] See §§184, 185, 186 and 183 (b), Nat. Int. Rev. Code.

[45] Inchausti & Co. v. Cromwell, 20 Phil. 345; Macondray & Co. v. Administrador de Rentas Internas, G.R. L-2624, September 29, 1951.

[46] G.R. L-7190, April 28, 1956.

items did not warrant the conclusion that they did not form part of the gross selling price, because the tax is based not only on the actual cost of production of the goods and the profit added thereto by the seller to make up its factory price of the merchandise, but also upon each and every incidental expense taken into account and charged to and paid by the buyer, whether or not the seller makes additional profit on these incidental items.

As already stated, the percentage sales tax is paid by the producer, manufacturer or importer. One who purchases raw or fresh eggs and later resells them after having salted them, is a manufacturer and is liable to pay the percentage sales tax or manufacturer's tax.[47] The process of salting the boiling imparts to the eggs substantially different qualities than those possessed by fresh eggs, and therefore such process amounts to manufacture; and even if this were not manufacturing in the ordinary parlance, it certainly involves production, and makes the person salting the eggs a producer of a distinct class of merchandise, with qualities and uses all its own, and therefore, makes its original sale subject to the percentage tax.[48] Had such person been the *producer* of the *fresh* eggs, he would have been exempt from the tax, under the provision which exempts the sale of agricultural products "wether in their original state or not" by the producer thereof.[49]

On the other hand, one who grows pineapples, cans them and sells them, is exempt from the manufacturer's or producer's tax, because the sale involves agricultural products sold by the producer himself.[50] Exemption from the tax is not divested merely because the products themselves have undergone processing of some kind. At what particular stage the extent of the manufacturing process extinguishes or supersedes the agricultural character of the product cannot be determined in advance, but such uncertainty is no obstacle to the application or refusal of the exemption in certain cases.[51] Where the purpose of canning is merely to preserve the product which would otherwise deteriorate, the canning of pineapples in no way alters its nature, qualities and texture and it distinctly remains an agricultural product.[52] Besides, the exemption applies whether

[47] Ngo Siek v. Collector of Internal Rev., G.R. L-8989, October 18, 1956. The petitioner was held liable to pay the 7% tax under section 186.

[48] *Ibid.*

[49] §188 (b), Nat. Int. Rev. Code.

[50] Philippine Packing Corporation v. Collector of Internal Rev., G.R. L-9040, December 26, 1956.

[51] *Ibid.*

[52] *Ibid.*

the agricultural product is sold in its original state or not.[53] The purpose of the exemption is to favor farm industry and to encourage the development of the resources of the country, and to levy the tax on all persons engaged in making a profit upon goods produced by others, but to exempt from the tax all persons directly producing goods from the land.[54]

(b) *Other percentage taxes*

(1) *On contractors*

In the case of *Celestino Co & Co. v. Collector of Internal Revenue*,[55] the petitioner was a partnership which was engaged in the business of making sash, windows and doors and selling the same. It claimed that it was a contractor for such materials and not a manufacturer thereof[56] because it made the windows and doors only when customers placed their orders and only according to the desired specifications of such customers. The Court was of the opinion that this did not make the petitioner a "contractor within the purview of Section 191 of the National Internal Revenue Code. There are no less than fifty occupations enumerated in the aforesaid section subject to percentage tax and after reading carefully each and everyone of them, (the Court cannot) find even one under which the business enterprise of petitioner could appropriately fall. Construction work contractors are those who alter or repair buildings, structures, streets, highways, seweres, street railways, railroads, logging roads, electric, steam or water plants, telegraph and telephone plants and lines, electric lines or power lines, and includes any other work for the construction, altering or repairing for which machinery driven by mechanical power is used." Furthermore, it was proven that the petitioner habitually makes sash, windows and doors and that if the specifications given by the customers did not happen to be of the kind habitually manufactured by it, it would not accept the order, and no sale is made. So that the transaction, the

[53] The court noted that the canning of the products in this case is a mere incident and consequence of petitioner's large-scale production of pineapple, and that it had to resort to a preserving process, for the volume of its products (170,000 tons a year) made it impossible to dispose of the same in the local market. The court believed that the legislature, in providing a tax exemption for agricultural products "whether in their original state or not", had precisely in mind that fruit crops could not be carried and sold on a large scale without resort to some process to prevent their deterioration. The law could not have meant to cover small-scale farmers and producers, who are already fully protected under the same section (Sec. 188). The court therefore concluded that the exemption here in question must mean to cover the large-scale producers).

[54] Medina v. Rafferty, 38 Phil. 167; restated in Philippine Packing Corporation v. Collector, *supra*.

[55] G.R. L-8506, August 31, 1956.

[56] If it were a manufacturer, it would have to pay 7% tax under §186, but if it were considered a contractor, it would only pay 3% under §191.

Court observed, was no different from a purchase of manufactured goods held in stock for sale. The company was therefore liable to pay the percentage sales tax as a manufacturer, and not the percentage tax as a contractor.

(2) *On stevedores*

Section 191 imposes a 3% tax on the gross receipts of stevedores. A stevedore is "one who works at, or one who is responsible for, the unloading and loading of a vessel in port;" "one whose occupation is to load or unload vessels in port."[57] The fact that the officers of the ship on which the goods are loaded and from which they are unloaded supervised the loading and unloading, has nothing to do with the tax liability.[58]

(3) *On keepers of restaurants, bars and cafes*

Section 191 of the National Internal Revenue Code imposes a 3% tax on the gross receipts of keepers of restaurants, refreshment parlors and other eating places, and a 7% tax[59] on the gross receipts of keepers of bars and cafes where wine or liquor is served. A person who operates a hotel and restaurant where not only meals, but also wine and liquor are served to all customers, whether hotel guests or not. is liable for the 7% tax on keepers of bars and cafes.[60] Although the law mentions only "bars and cafes" where wine or liquor is served as subject to the 7% tax, a "restaurant" where such articles are served is also subject to the tax. "Cafe" is a general term which includes restaurants.[61] The law does not apply only to purely drinking establishments, otherwise it would be easy for taxpayers to evade the payment of the 7% percentage tax in Section 191 by simply not maintaining a purely drinking establishment and keeping just a sort of an eating establishment but at the same time serving therein wines or liquors.[62]

7. COMPENSATING TAX

All persons residing or doing business in the Philippines who purchase or receive from without the Philippines, not for resale, any goods or merchandise, have to pay a compensating tax equivalent to the percentage tax which would have been imposed on said goods

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57 Definition quoted in Cebu Arrastre Service v. Coll. of Internal Revenue, G.R. L-7444, May 30, 1956.

58 *Ibid.*

59 As amended by Rep. Act 1612. Prior to the amendment, the tax was only 5%.

60 Malicse v. Collector of Int. Rev., G.R., L-7578, July 24, 1956.

61 *Ibid.* The court cited Webster's definition of "cafe". "a coffee-house; a room for coffee and light refreshments; a restaurant."

62 Malicse v. Coll., *supra.*

if they were sold by such persons. The compensating tax therefore takes the place of the percentage tax and those liable for the latter are not subject to the former.[63] The purpose of the tax is to place persons purchasing goods from dealers doing business in the Philippines on equal footing, for tax purposes, with those who purchase goods directly from without the Philippines. If the compensating tax were not imposed on these goods, the consuming public who buy from local dealers would have to shoulder the burden of the sales tax as it would form part of the selling price, while those who import directly from abroad for their own use would be paying less for the same goods because they are not subject to the percentage sales tax. This situation would prove unjust to local merchants.[64] The compensating tax and the sales tax therefore, secure the same revenues. They are however different from each other—the sales tax is a tax on the freedom to purchase, while a compensating tax is a tax on the enjoyment of what was purchased.[65]

The compensating tax is not a tax on the importation of goods. "This is evident from the proviso that imported merchandise which is to be disposed of in transactions subject of sales tax under Sections 184, 185, 186, 187 and 189 of the Internal Revenue Code, is expressly exempted from the compensating tax. This feature shows that it is not the act of importation that is taxed under Section 190; but the use of imported goods not subjected to a sales tax, otherwise the compensating tax would have been levied on all imported goods regardless of any subsequent tax that might accrue. Moreover, the compensating tax accrues whether or not the imported goods are subject to pay customs duties."[66]

8. DOCUMENTARY STAMP TAX

For the purposes of the documentary stamp tax, freight receipts issued by bus companies are bills of lading and are therefore subject to the tax. Bills of lading, in modern jurisprudence, are not those issued by masters of vessels alone, they now comprehend all forms of transportation, whether by sea or land, and include

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63 Exceptions from the compensating tax are made in favor of (1) merchandise subject to specific tax; (2) those used by the importer himself in the manufacture or preparation of articles subject to specific tax or those for consignment abroad and are to form a part thereof; (3) any single shipment consigned to any single person, total value of which does not exceed ₱100; and (4) goods brought in by residents returning from abroad, the value of which does not exceed ₱500. See §190 Nat. Int. Rev. Code.

64 See Report of the Tax Commission of the Philippines, Vol. 1, pp. 74-75 as cited in International Business Machines Corporation of the Philippines v. Collector of Internal Rev., G.R. L-6732, March 6, 1956.

65 Mcleod v. Dilworth Co. 322 US 327.

66 International Business Machines Corp. v. Collector, *supra*.

bus receipts for cargo transported.[67] Section 227 of the National Internal Revenue Code imposes the tax on receipts for goods or effects shipped from one port or *place* in the Philippines to another port or *place* in the Philippines. The use of the world *place* after *port* and of the world "receipt" shows that the receipts for goods shipped on land are included.[68]

The stamp tax on the bill of lading is due only if the value of the goods exceed ₱5.[69] A Department of Finance regulation creating a presumption of tax liability in case the receipt or bill of lading does not state that the shipment is worth ₱5 or less is not void. It does not purport to change or modify the law; it does not create a liability to the stamp tax when the value of the goods does not appear on the face of the receipt. The regulation impliedly required the statement of the value of the goods in the receipts so that the collection of the tax can be enforced, otherwise the assessment and collection of the tax would be well-high impossible. The regulation merely creates a rebuttable presumption of liability and the taxpayer can adduce evidence that the tax is not collectible because the value of the merchandise concerned does not exceed the amount of ₱5.[70]

The stamp tax is to be paid by the one "making, signing, *issuing*, accepting or transferring" the document, instrument or paper subject to the tax.[71] Therefore, a bus company issuing freight tickets or bills of lading are liable for the tax.[72]

9. FRANCHISE TAX

The franchise tax is imposed on the gross earnings or receipts from the business covered by the law granting the francise.[73] When the franchise expressly declares that the franchise tax shall be in lieu of any and all taxes of any kind, nature and description on its "receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted," the grantee is exempt from paying income tax, since the latter is a tax on receipts and revenue.[74] And where the franchise was granted after the effectivity of the Internal

[67] Interprovincial Autobus Co. v. Collector of Internal Revenue, G.R. L-6741, January 31, 1956.
[68] *Ibid.*
[69] §227, Nat. Int. Rev. Code.
[70] Interprovincial Autobus Co. Inc. v. Collector, *supra.*
[71] §210, Nat. Int. Rev. Code. Italics supplied.
[72] Interprovincial Autobus Co. v. Collector, *supra.*
[73] See §259, Nat. Int. Rev. Code.
[74] Carcar Electric & Ice Plant Co., Inc. v. Collector of Int. Rev., G.R. L-9257, November 27, 1956.

Revenue Code (July 1, 1939), the grantee must pay the rate established by said Code.[75]

Legislative grants generally provide that, during the first years of the franchise, the grantee shall pay taxes at a rate which is specially low in order to give him sufficient time to learn the problems peculiar to his business, make necessary adjustments therein and stabilize its operation. After such period, there is no justification for a special rebate in the rate of taxes collectible.[76]

10. AMUSEMENT TAX

(a) *On proprietor, operator or lessee of night club*

A night club is a "place or establishment selling to the public food or drink, where the customers are allowed to dance."[77] The Fiesta Pavilion of the Manila Hotel comes squarely within said definition because it sells food or drinks to the public, and its customers are allowed to dance therein.[78] The operator therefore of the Manila Hotel Fiesta Pavilion is liable for the amusement tax as an operator of a night club.[79] However, when an organization contracts for the use of said pavilion for one night, in order to hold a benefit dance, it does not step into the shoes of the Manila Hotel as an operator of a night club. Neither can it be considered a lessee of a night club. Evidently, the law contemplates the operation as a business or for profit and not merely for occasions more or less casual or circumstantial. In other words, to come under the purview of the law, the place must be used and operated as a

[75] Under §259, it is 5% or the rate established by the special charters of the grantee, whichever is the higher. In the Carcar Electric v. Coll. case *supra*, the grantee's charter provided that the franchise was subject to all terms and conditions of Act 3636, which fixes 2% of its gross earnings as the franchise tax. But the franchise of the petitioner was granted only in 1950, at which time, the original 2% tax had already been increased to 5% by §259 of the Nat. Int. Rev. Code. Therefore, the petitioner was held liable for 5%, since Act 3636 was deemed modified by the Internal Revenue Code.

[76] Thus, where the period of the franchise originally granted is 25 years and said period is later extended, and the original franchise imposed 1% franchise tax for the first 10 years and 2% for the remining 15 years, the rate of tax to be collected for the extended period, i.e. for the rest of the life of the franchise, is the greater one — 2%. Hilario et al. v. David, G.R. L-8046, August 30, 1956. In this case, for the last 15 years of the original period, had already been paying taxes at the rate of 2% of its gross earnings and still it found it profitable to continue its business to the extent even of seeking the extension of its lifetime. The court considered this as proof of the lack of justification in applying the lower rate of 1%.

[77] Executive Order No. 319, series of 1941 as cited in Collector of Int. Rev. v. Jr. Women's Club of the Phil., G.R. L-6992, February 28, 1956.

[78] Collector v. Jr. Women's Club, *supra.*

[79] §260, 4th paragraph, National Int. Rev. Code provides: "In the case of cockpits, cabarets, and night clubs, there shall be collected from the proprietor, lessee, or operator a tax equivalent to ten per centum and in case of race tracks, twenty per centum of the gross receipts, irrespective of whether or not any amount is charged or paid for admission. x x x"

night club in its true sense and not merely for some occasional celebration, in which case the subject of the lease would not be a *night club* but merely a *place of amusement*, and therefore the lessee thereof would be taxed as such and not a lessee of a night club.[80] And if the organization leasing it is charitable, it would be liable for only 50% of the tax due under the law.[81]

(b) *On operator of race tracks*

The law provides that for the purpose of the amusement tax on cockpits, cabarets, night clubs and race tracks, the term "gross receipts" embraces all the receipts of the proprietor, lessee, or operator of the amusement place.[82] Under this provision, a club which owns race tracks but is engaged in other activities besides horse-racing, is liable to pay the amusement tax only on its gross receipts from its *own* operation of its race-tracks and not on receipts from its other activities.[83] It should be noted that "gross receipts" is prefaced and qualified by the phrase "for the purpose of the amusement tax" which shows that the very nature of the tax is decisive.[84] Thus, such club's receipts from rentals paid by lessees of the race tracks (who conduct the horse-racing themselves) or from rentals paid by private individuals for spaces used by the latter as restaurants or bars on racing days, are not subject to the amusement tax.[85] All of these rentals had nothing to do with the taxpayer's business of horse-racing. Moreover, the law itself provides that the tax should be paid by the proprietor, the lessee or the operator, as the case may be, singly, and not by by all at one and the same time.[86]

11. EXEMPTIONS[87]

The well-settled rule that an exemption from tax must be clearly expressed by the law because it cannot be created by implication[88] was applied by the Supreme Court in several cases. In the case of *Collector of Internal Revenue v. Manila Jockey Club,*[89] the Court construed that the provision in the act authorizing the holding by

[80] Collector v. Jr. Women's Club, *supra.* Under §260, the tax on a lessee of a place of amusement is based on the admission fee charged.
[81] Ibid. See §261, Not. Int. Rev. Code.
[82] §260, 4th paragraph, Nat. Int. Rev. Code.
[83] Collector of Int. Rev. v. Manila Jockey Club Inc., G.R. L-7273, May 30, 1956.
[84] *Ibid.*
[85] *Ibid.*
[86] *Ibid.*
[87] See also the discussion on the different taxes. Some of the cases dealing on exemption were discussed under the topic corresponding to the tax to which the exemption refers.
[88] Asiatic Petroleum Co. v. Llanes, 49 Phil. 466; House v. Posadas, 53 Phil. 338.
[89] G.R. L-9755, March 23, 1956

the Philippine Charity Sweepstakes Office of horse races for charitable purposes[90] exempting "the racing club holding these races" from "the payment of any municipal or national tax," exempts not the Manila Jockey Club who owns the race tracks, but the Philippine Charity Sweepstakes Office who holds the races. And the exemption refers not to the income derived from the races because these are already exempt under Section 6 of Act 4130, but to the fixed taxes imposed by the Internal Revenue Code[91] and to the city or municipal license fee imposed by Republic Act 309.[92]

The exemption of new and necessary industries[93] from all taxes directly payable by the new industry is limited by the law, which adds the condition that said taxes must be "in respect to said industry." Not all possible transactions or activities of industries are directly related thereto. It would be exempt from the business taxes, the import taxes, the specific taxes on the products manufactured for the industry because they are absolutely essential in the operation and maintenance of the industry. The purchase of the original site where the industry is to be established may perhaps be a transaction in respect to said industry because necessary and essential to the establishment of its original plant. But the acquisition by donation of lots contiguous to the original lots after the operation had lasted some few years, no longer falls under the above category.[94] And the convenience that the new lots contribute should not justify further extension of the exemption. Therefore, the donee's tax is due on the said lots from such new and necessary industry.[95]

The exemption of vessels from the compensating tax under Republic Act 361 extends by express provision of said Act, to vessels "purchased and received before or after the taking effect of the Act," which was on June, 1949. Did this mean that owners of vessels purchased before June, 1949 but on which the compensating tax had already been paid, may claim for refund of the tax? In the case of *Flora Co v. Collector of Internal Revenue*,[96] the Supreme Court held that it did not. The law does not imply nor expressly

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90 Rep. Act No. 79.

91 §193, Internal Revenue Code—₱500 for each day of racing.

92 ₱300 for each day of racing.

93 Rep. Act No. 35, Sec. 1.—"Any person, partnership, company or corporation, who or which shall engage in a new and necessary industry shall, for a period of four years from the date of the organization of such industry, be entitled to exemption from the payment of all internal revenue taxes directly payable by such person, partnership, company, or corporation in respect to said industry."

94 Collector of Int. Rev. v. Marcelo Steel Corporation & Court of Tax Appeals, G.R. L-9248, October 31, 1956.

95 *Ibid.*

96 G.R. L-9352, Nov. 29, 1956.

provide that all taxes already collected on purchases of vessels shall be returned. Where the repealing law is not made retroactive, taxes already collected should be retained after the repeal. Congress should not be presumed to render illegal all those collections previously authorized by law.[97]

12. LIABILITY FOR ERRONEOUS RETURN

The taxpayer who files erroneous returns in good faith and without wrongful or fraudulent intent, is not liable for surcharge or penalty, which can be imposed only if the returns are fraudulently made.[98] This is specially true where the taxpayer's belief is "founded on the advise of eminent counsel or where the mistake is one involving some matter of doubt or difficulty of such serious nature as to reasonably require judicial interference." In such a case, the false statement is due to honest mistake of law or fact.[99]

13. COLLECTION OF TAXES

The civil remedies for the collection of internal revenue taxes are three: (1) by distraint of goods and personal property of the taxpayer; (2) by levy upon real property and interest on or right to real property of the taxpayer; and (3) by judicial action.[100] The first two are summary in nature, since they do not need the intervention of any court, but may be resorted to by the Collector of Internal Revenue upon the delinquency of the taxpayer. However, these summary remedies can be resorted to only within a limited period of time. With respect to income tax, it is well-settled in this jurisdiction that under Section 51 (d) of the National Internal Revenue Code,[101] 101 the government loses its right to collect the income tax by summary proceedings after three years have elapsed from the time that the income tax return was filed,[102] after which

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97 The Court also held that even assuming the tax as illegally collected, since the claim for refund was not made within the two year period prescribed by §306 of the Nat. Int. Rev. Code, no recovery could be granted.

98 Insular Lumber Co. v. Coll. of Int. Rev., G.R. L-7190, April 28, 1956.

99 *Ibid.*

100 See §316, Nat. Int. Rev. Code.

101 "In cases of refusal or neglect to make a return and in cases of erroneous, false, or fraudulent returns, the Collector of Internal Revenue shall, upon the discovery thereof, at any time within three years after said return is due, or has been made, make a return upon information obtained as provided for in this code or by existing law, or require the necessary corrections to be made, and the assessment made by the Collector of Internal Revenue thereon shall be paid by such person or corporation immediately upon notification of the amount of such assessment." §51 (d), Nat. Int. Rev. Code. This is a reproduction of §9(a) of the former Income Tax Law.

102 Philippine Sugar Estate Development Co. Inc. v. Juan Posadas, 68 Phil. 216; Collector v. Haygood, 65 Phil. 520. See also A. P. Reyes v. Collector CTA No. 42.

period, the tax may be collected by judicial action only. This rule was reiterated in the case of *Collector of Internal Revenue v. Jose Avelino.*[103] In this case, the Supreme Court reconciled Sections 331 and 332 of the Revenue Code on the one hand, and Section 51 (d) of the same code on the other. Section 332[104] which allows assessment of internal revenue taxes in case of false of fraudulent returns within ten years from the discovery of the falsity or fraud, and collection by any of the three methods within five years from such assessment, applies to internal revenue taxes in general, and not to income tax, which is covered by Section 51 (d).[105] The Court noted that when the National Internal Revenue Code was codified and enacted in 1939, the whole Act No. 2833, known as the Income Tax Law, was incorporated therein and became Title II thereof. There is nothing in the new Code which indicates or from which we may infer that Section 51 (d) was repealed or modified by Sections 331 and 332 thereof. Since repeals by implications are not favored, the Court considered it its duty to harmonize and reconcile the provisions. "A cursory reading of the Internal Revenue Code clearly reveals the clear intention of the legislative body to preserve *in toto* the procedure and method originally adopted in the collection of income tax." The Court therefore held that both sets of provisions are valid and binding, one being special, particularly applicable to income tax, and the other general, applicable to the other internal revenue taxes. To hold otherwise, said the Court, would be to render nugatory and meaningless Section 51 (d), a conclusion not warranted by the circumstances, since

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[103] G.R. L-9202, November 19, 1956.

[104] "Section 332. *Exception as to period of limitation of assessment and collection of taxes.* (a) In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission.

(b) Where before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Collector of Internal Revenue and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(c) Where the assessment of any internal-revenue tax has been made within the period of limitation above prescribed such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Collector of Internal Revenue and the taxpayer before before the expiration of such five-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

[105] It is to be noted that §51 (d) speaks merely of the period when the assessment of the income tax may be made and, unlike §332, does not provide for a period within which collection by summary proceedings may be made. The Court therefore has broadened the literal meaning of the provision by holding that summary collection of the income tax must be made within three years.

it cannot be presumed that Congress has adopted it merely through an oversight."

Since under Section 332 (a), an assessment of an internal revenue tax (other than income tax) may be made within ten years from the discovery of the falsity or fraud in the returns, or of the omission to file such returns, and since under Section 332 (c), the tax may be summarily collected within five years from said assessment, in the presence of proof that the discovery was made in 1946, proof of the date of the assessment of the tax is indispensable to sustain a claim of invalidity of the distraint.[106] Otherwise, the Court cannot assume that the distraint took place beyond the five-year period from the assessment, because the presumption is in favor of the regularity of the acts of public officers.[107]

14. REMEDIES OF THE TAXPAYER

a. *Injunction*

Section 305 of the National Internal Revenue Code provides that an injunction is not available to restrain the collection of a tax.[108] This section has however been repealed by Section 11 of Republic Act No. 1125, which provides that when in the opinion of the Court of Tax Appeals, the collection of the tax by summary proceedings may jeopardize the interest of the Government and/or the taxpayer, such court may suspend the collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double said amount. Thus, in the case of *Collector v. Jose Avelino,*[109] the Court held that where the collection is illegal, as when summary collection by distraint is resorted to beyond the period allowed by law, injunction will be granted. And in such a case, no bond may be required of the taxpayer because to require such a bond under such a situation would be illogical and improper, since the Collector's action is contrary to law.[110] On this last point, Justices J. B. L. Reyes, Concepcion and Montemayor dissented on the ground that the law is clear in requiring a bond or deposit should the tax collection be suspended. According to their opinion, the purpose behind the requirement is to have an assurance of payment should the taxpayer become insolvent. Being an exception to the general rule

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[106] Interprovincial Autobus Co., Inc. v. Coll. of Int. Rev., G.R. L-6741, January 31, 1956.

[107] *Ibid.*

[108] The reason behind this provision is that should an injunction be allowed, the government may in many cases be deprived of the immediate use of the revenues sought to be collected and this might result in the paralization of its operations, and thus cause serious detriment to the public. See Churchill v. Rafferty, 32 Phil. 585; Sarasola v. Trinidad, 40 Phil. 252.

[109] *Supra.*

[110] *Ibid.*

that collection of taxes should not be enjoined, Section 11 of Republic Act 1125 should, according to the dissenting opinion, be given a strict interpretation.

b. *Claim for refund*

Should the taxpayer believe that the tax was illegally or erroneously collected, he may file a claim for refund with the Collector of Internal Revenue. No suit for refund will prosper unless such claim has been filed and unless the suit is brought within two years from the payment of the tax,[111] whether or not the Collector has acted on the claim for refund.[112] This limitation period is important to the government, so that it may know what revenues are controversial and may not be counted on for purposes of expenditure.[113] In such suit, the burden of proving that the assessment was illegal is on the taxpayer.[114] And such action cannot prosper although brought by the persons on whom the law imposes the tax, if the latter was not the one who actually paid the tax.[115]

c. *Interest on the refunded amount*

The question as to whether the Collector of Internal Revenue is liable for interest on taxes erroneously or illegally collected was discussed by the Supreme Court in the case of *Carcar Electric and Ice Plant Co., Inc. v. Collector of Internal Revenue.*[116] In deciding that the Collector is liable for such interest, the Court traced the history of Section 306 of the National Internal Revenue Code.[117] Under the Internal Revenue Act of 1914, the Collector of Internal Revenue was held liable for such interest,[118] in the absence of any exempting provision in the law, and on the strength of American authorities to the effect that the State's exemption from paying interest on its obligations was never applied to subordinate governmental agencies. Subsequently, Section 1579 of the Administrative

111 §306, Int. Rev. Code. Co v. Collector of Int. Rev., *supra.*

112 P. J. Kiener Co. Ltd. v. David, G.R. L-5163, April 13, 1953.

113 Co v. Collector, *supra.*

114 Interprovincial Autobus Co. v. Collector, *supra.*

115 Arong v. Raffiñan, G.R. L-8673-74, February 18, 1956.

116 G.R. L-9257, Nov. 27, 1956.

117 "Sec. 306. *Recovery of tax erroneously or illegally assessed or collected.* —No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

118 The court cited Hongkong and Shanghai Bank v. Rafferty, 39 Phil. 153 and Heacock Co. v. Collector of Customs, 37 Phil. 970.

Code of 1917 expressly provided that any recovery of internal revenue taxes illegally collected would be "without interest", and the Court pointed out that thereafter, no judgments for interest were rendered against the Collector. However, in 1939, the National Internal Revenue Code came into effect and Section 306 thereof authorizes recovery of taxes erroneously or illegally collected, but the expression "without interest" is omitted. Since the rule is that, in the absence of words of exemption the Collector is liable for interest on taxes improperly collected, the Legislature's failure to reenact the words "without interest" was deemed by the Court to impart a desire to return to the rule in force prior to 1917 under the Internal Revenue Act of 1914, — i.e., that the Collector is liable for interest. The Court noted further that this view is supported by Section 310 of the National Internal Revenue Code,[119] which speaks of "damages" that the Collector is liable for, since damages for wrongful exaction of money is precisely interest at the legal rate.

This liability of the Collector for interest on taxes illegally or erroneously collected, serves as an "additional safeguard in favor of the taxpayer against the arbitrariness in the exaction or collection of taxes and imposts."[120]

15. JURISDICTION OF THE COURT OF TAX APPEALS

Republic Act 1125 grants the Court of Tax Appeals exclusive appellate jurisdiction over decisions of the Collector of Internal Revenue in cases involving disputed assessment, refunds of internal revenue taxes, fees or other charges and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue.[121] Under the rule of statutory construction known as *ejusdem generis*, the "other matters" that may come under the general clause should be of the same nature as those that have preceded them; i.e., in order that a matter may come under the general clause, it is necessary that it belongs to the same kind or class therein specifically enumerated.[122] Thus, where the action is to enjoin the Secretary of Finance and the Collector of Internal Revenue from allowing the sale of bookkeeping sets on the ground that it

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119 "Sec. 310. *Satisfaction of judgment recovered against treasurer or other officer.*—When an action is brought against any revenue officer to recover damages by reason of any act done in the performance of official duty, and the Collector of Internal Revenue is notified of such action in time to make defense against the same, through the Solicitor-General, any judgment, damages, or costs recovered in such action shall be satisfied by the Collector of Internal Revenue upon approval of the Department Head, or if the same be paid by the person sued, shall be repaid or reimbursed to him. x x x x."

120 Cacrar Electric and Ice Plant Co. v. Collector, *supra.*

121 §11, Rep. Act No. 1125.

122 Ollada v. Court of Tax Appeals, *et al.*, G.R. L-8878, July 24, 1956.

would offer unfair competition to the petitioner, the Court of Tax Appeals has no jurisdiction over the case because it does not involve any disputed assessment or refund of any internal revenue tax, fee, charge or penalty imposed in relation thereto.[123] If the interpretation were otherwise, then it would follow that such "other matters" would even include cases involving a violotion of the Internal Revenue Code and the penal provisions thereof, and undoubtedly, the Court of Tax Appeals does not have criminal jurisdiction.[124]

Section 22 of Republic Act 1125 provides that all cases involving disputed assessment of internal revenue taxes or customs duties pending before the Court of First Instance should be remanded to the Court of Tax Appeals. Although this provision does not expressly refer to cases involving real estate taxes, such cases should also be remanded to the Court of Tax Appeals.[125] This provision should be harmonized with Section 7, which is the general provision defining the jurisdiction of the Court of Tax Appeals, and under which the Court has exclusive appellate jurisdiction over cases involving assessment and taxation of real property.[126]

Under Section 7 of said Act, the Court of Tax Appeals has also exclusive appellate jurisdiction over cases involving decisions of the Commissioner of Customs, wherein the goods subject to customs duties are declared forfeited by the owner thereof. Therefore, a writ of prohibition may be granted to prohibit a judge of the Court of First Instance from taking cognizance of the case, since it is beyond his court's jurisdiction.[127]

The Court of Tax Appeals has also exclusive appellate jurisdiction over decisions of the Collector of Internal Revenue involving the assessment and collection of war profits. This conclusion is inescapable from a cursory reading of Sections 5 and 9 of the War

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[123] *Ibid.* In this case, Ollada had devised a simplified bookkeeping set. The respondent accountants flooded the market with alleged simplified bookkeeping sets claimed to be their own when in fact they were reproductions of the Revenue Regulations. The latter sets were approved by the Secretary of Finance. Hence, Ollada brought a suit before the Court of First Instance to enjoin the government officials concerned from allowing the sale of such bookkeeping sets and asked that the respondent accountants be made to pay him damages for unfair competition. The Court of First Instance remanded the case to the Court of Tax Appeals upon the effectivity of Rep. Act 1125, on the ground that it involved a decision of the Collector of Internal Revenue and thus within the exclusive appellate jurisdiction of the Court of Tax Appeals.

[124] *Ibid.*

[125] Bislig Bay Lumber Co. Inc. v. Provincial Government of Surigao, November 13, 1956, G.R. L-9023.

[126] *Ibid.*

[127] Namarco v. Macadaeg, G.R. L-10030, January 18, 1956; see also Millarez v. Amparo, 51 O.G. No. 7, 3462.

Profits Tax Law.[128] Under Section 5, all assessments of the war profits tax are to be made by the Collector of Internal Revenue; and under Section 9, all administrative, special and general provisions of law including the laws in relation to the assessment, collection and refund of internal revenue taxes are extended and made applicable to the war profits tax.

C. MUNICIPAL TAXATION

Most of the cases decided last year involving municipal taxation deal with the question of the power of a municipal corporation to impose a tax. It is a well-settled rule that a municipal corporation has no inherent power to tax and that it can do so only under an express grant from the legislature.[129] Thus, where the power granted is merely to impose license fees on theaters, the municipality or city concerned has no power to impose a tax on the theater business.[130] And where the municipality or city is granted the power to tax, it can only impose the kind of taxes expressly provided and only with respect to the objects expressly enumerated. Thus, when a city is granted the power to impose a tax on the *business* of selling combustible or explosive materials, it has no power to impose a *specific tax* on gasoline sold.[131] Similarly, when the power to impose a tax on the business of shipyards is granted to a city, such grant does not carry with it the power to impose a tax on a shipyard not conducted as a business but used for the exclusive purpose of the owner thereof.[132] However, a tax on a retail dealer of "general merchandise" includes the power to tax a retail dealer of liquified gas, which is "merchandise," since it is being bought and sold in trade.[133]

In the case of *Manila Press, Inc. v. Sarmiento*,[134] the plaintiff was taxed as a retail dealer of papers and stationary under an ordinance which imposed two kinds of taxes: first, a tax on retail dealers of papers, books and stationary; and second, a tax on printers, including the sale of printing materials. Both taxes were based on

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128 Castro v. David, G.R. L-8508, November 29, 1956. In this case, the complaint assailed the validity of the levy upon plaintiff's property for non-payment of the war profits tax.

129 Medina v. City of Baguio, 48 O.G. No. 11, 4769.

130 Arong v. Raffiñan & Inclino, Young et al. v. Raffiñan & Zabate, G.R. L-8673-74, February 18, 1956. But the plaintiffs were not alowed recovery because the taxes were paid not by them but by the public. See also Eastern Theatrical Co. Inc. v. Alfonso, 46 O.G. Supp., p. 303; City of Baguio v. de la Rosa, G.R. L-8268. For the distinction between license fee and tax, see Cu Unjieng v. Patstone, 42 Phil. 818.

131 We Wa Yu v. City of Lipa, *supra.*

132 Manila Lighter Transportation Inc. v. Municipal Board, City Treasurer & City Mayor of the City of Cavite, G.R. L-6848, April 27, 1956. In this case, the plaintiff operated a marine shop devoted solely to the repair of its own watercraft. A marine shop was held to be included within the term "shipyard".

133 City of Manila v. Interisland Gas Service, G.R. L-8799, August 31, 1956.

134 G.R. L-7902, May 11, 1956.

gross receipts, but the printer's tax was lower than the retailer's tax. Plaintiff received orders for the printing of stationaries and office supplies from its customers, but at times sold books, papers and stationaries without doing any printing jobs on them. The Court held that as to the plaintiff's receipts from the sale of books, papers and stationaries on which no printing work was done, the plaintiff could be taxed as a retail dealer thereof. But when it printed on such papers, stationaries and office supplies the names of its customers, the plaintiff's principal service was that of a printer, and not that of a retail dealer. Although there is also a sale of the paper and material, this is a mere incident of the service of printing, the value of which is considerably more than the material on which it is done.

Section 4 of Commonwealth Act 472 provides that the approval of the Secretary of Finance shall be secured whenever the municipal license tax on any business is increased by more than 50%. The purpose of the law is to forestall the imposition of unreasonable and oppressive license taxes on businesses, and therefore, the approval of the Secretary of Finance is a condition *sine qua non* for the validity of the ordinance making the increase.[134] However, it becomes effective only on January first of the year following it was approved by the Secretary of Finance, provided the latter took place before December fourteenth.[135]

[135] Municipal Government of Pagsanjan, Laguna v. Angel Reyes, G.R. L-8195, March 23, 1956.

[136] *Ibid.* §2309 of the Revised Administrative Code provides that a "municipal license tax already in existence shall be subject to change only by ordinance enacted prior to the fourteenth of December of any year for the next suceeding year. Since in this case, the ordinance was approved by the Secretary of Finance on February 22, 1949, it became effective on January 1, 1956.