ANNUAL SURVEY OF CASES ON TAXATION

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This survey is divided into five general topics: Real Estate Tax, Internal Revenue Taxes, Customs Law, Court of Tax Appeals and Municipal Taxation. Since the largest number of the tax cases decided last year involved internal revenue taxes and the law creating the Court of Tax Appeals, these two topics have been divided into several sub-topics for the convenience of the reader. Many of the cases merely reiterate principles laid down in previous decisions of our Supreme Court, specially in the field of business taxes and the methods of collection of taxes by the Government. There are, however, several cases which lay down new principles which are quite significant, specially with respect to real estate tax, income tax, and the interpretation of section 11 of R.A. 1125 which created the Court of Tax Appeals.

REAL ESTATE TAX —

Delinquency in the payment of real estate taxes may give rise to the sale at public auction of the real property subject of the tax.[1] Before such sale can be made, however, there are certain requirements with respect to notice and publication which must be followed. Under the Charter of the City of Manila, such sale must be advertised by posting a notice at the City Hall and by publication in a newspaper of general circulation. There is no requirement as to personal notice to the delinquent taxpayer.[2] Under the Assessment law,[3] which applies to provinces only and not to chartered cities, advertisement of the sale consists in the posting of a notice at the provincial and municipal building and in the barrio where the land is situated, publication in a newspaper of general circulation and personal notice, by registered mail or by messenger, to the delinquent taxpayer if his residence is known.[4] Under the latter provision, is the nature of the sale proceedings *in personam* or *in rem*? In the case of *Bruna Pantaleon v. Gregoria Catope Santos*,[5] there were two registered owners of land situated in the province, but it was declared for tax purposes in the name of only one co-owner. The property was sold for delinquent taxes, after notice to the declared co-owner, but without notice to the undeclared co-owner. The issue was whether the tax sale included the interest of the undeclared co-owner who had not received personal notice of such sale. The Supreme Court, citing the case of *Government of the Philippines v. Adriano*,[6] held that under the Assessment Law, the provisions of the law for the sale of the land for non-payment of taxes establish a proceeding *in personam*, as the tax is not a charge on the land alone, and only the particular interest of the person to whom the land is assessed is sold. The Court distinguished between the nature of the sale proceedings under the Charter of the City of Manila and the Assessment Law. Section 56 of the Charter of Manila imposes a duty upon any person acquiring real estate or constructing thereon to prepare a declaration thereof, for purposes of assessment, and the

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1 Section 35, Com. Act 470, Assessment Law, and Section 69, Rep. Act 409, Charter of Manila.
2 Section 69, R.A. 409
3 C.A. 470
4 Section 35
5 GR L-10289, July 31, 1957
6 41 Phil. 112

assessment then is made "valid and binding on all persons interested." Section 57 provides that if an owner fails to make or return a declaration and the assessor is unable to discover the owner, he must nevertheless list the same for taxation, and charge the tax against the true owner, if known, and if unknown, against an unknown owner. Section 68 provides that taxes and penalties assessed against realty constitute a lien thereon, superior to all others. Section 70 provides that the tax deed to be issued upon the sale conveys to the purchaser so much as has been sold, "free from all liens of any kind whatsoever." The above-indicated provisions of the Revised Charter of Manila are not found or included in the Assessment Law. The Court observed that had it been the intention of the law to make the proceedings for the sale of delinquent real estate in the provinces *in rem*, as in the City of Manila, the above provisions, which indicate that the proceedings bind the real estate and all persons having an interest therein, whether notified or not of all the proceedings, would have been inserted in the Assessment Law. Therefore, the Court concluded, under the provisions as they are, the proceedings for the sale of real estate for delinquency in the provinces must be held to be *in personam*. It follows as a necessary consequence that the rights of the registered but undeclared owners were not affected by the sale proceedings for delinquency.

As to what newspaper the notice should be advertised in, the case of *Cirilo Punzalan v. Alfredo Ascaño and Marcelino Sarmiento*[7] reiterates the ruling of *Basa v. Mercado*.[8] The law does not require that the publication be made in the newspaper with the largest circulation,[9] provided the newspaper is one of general circulation

In advertising the land for tax sale, the description of said land should tally substantially with the description of the land in the Transfer Certificate of Title of the declared owner. In the case of *Ricardo Velayo v. Fernando Ordoveza*,[10] the Supreme Court held the tax sale void on the ground, among others, that the description of the property in the advertisement of said tax sale was different from that which appeared in the Torrens title of the owner. The Court said: "It is hardly possible to sanction the tax sale of a property with a description distinct and different from that which appears in its certificate of title, without impairing the full faith and credence which the same is meant to command and, hence, without affecting the essence of the Torrens system."

Assuming all the requisites for publication have been met, the sale at public auction takes place at the time and place stated in the advertisement and the property is sold to the highest bidder, if his bid is at least equal to the amount of delinquent taxes, penalties and costs.[11] However, under Section 579 of the Revised Administrative Code, "officials and employees of the Government of the Philippine Islands are prohibited from purchasing, directly or indirectly, from the Government, any property sold by the Government for the nonpayment of any public tax", and such purchase shall be void. The question as to whether an official or employee of the City of Manila is disqualified under this prohibition was raised in the case of *Cirilo Punzalan v. Alfredo Ascaño, supra*. The Supreme Court held that such prohibition is applicable to employees of the central Government as well as to those of the City of Manila because

7 GR L-9305, July 11, 1957
8 61 Phil. 632
9 The notice in this case was published in the **Bagong Balita ng Bayan**, which was in general circulation in Manila, where the real property sold was located, but which had a circulation of only 20,000.
10 GR L-9061, November 18, 1957
11 See Sec. 37, CA 470 and Sec. 72, RA 409

Government of the City of Manila is nothing but a political subdivision of the Government of the Philippine Islands, or "better said, it is but a part of said Government to which 579 refers to."[12]

The officer charged with the conduct and supervision of the public sale and all steps and proceedings in relation thereto is the provincial treasurer under the Assessment Law,[13] and the City Assessor and Collector under the Charter of the City of Manila.[14] In the case of *Ricardo Velayo v. Fernando Ordoveza*, supra, it was the City Treasurer of Manila, instead of the City Assessor who issued the notice of sale, who conducted the public sale and who issued the corresponding certificate of sale and deed of sale to the highest bidder. The Supreme Court held that since the city treasurer had no authority under the Charter of Manila to issue the notice, certificate and deed of sale, the issuance thereof was insufficient to divest the delinquent owner of his title to the property in question.

The delinquent owner, however, does not lose all his rights to the property as soon as the property is sold to the highest bidder. He is given a period of "one year from the date of the sale" within which to redeem said property.[15] In the case of *Leon C. Santos v. Rehabilitation Finance Corporation*,[16] the question before the court was from what date the period of one year should be counted.[17] The Supreme Court held that the one year period of redemption should be counted from the time the certificate of sale at public auction is registered with the Register of Deeds, so that the delinquent registered owners or third parties interested in the redemption may know that the delinquent property had been sold, and that they have one year from said constructive notice of the sale by means of registration within which to redeem the property, if they wished to do so. Although the law uses the words "one year from the date of sale," said provision should be interpreted to refer to the date that the sale is actually registered in order to harmonize it with section 77 of the Land Registration Act,[18] under which any deed, demand, certificate or affidavit or any other instrument made in the course of proceedings to enforce tax liens, should be filed with the register of deeds.[19]

Under the Charter of the City of Manila, if there is no bidder at the public sale of the delinquent property who offers a sum sufficient to pay the taxes, penalties and costs, the property is forfeited to the City. Does the City become absolute owner of the property upon such forfeiture? In the case of

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12 Ascaño here was held liable to the plaintiff for damages because, knowing that he was prohibited by law to make the purchase in said auction, he acted in bad faith in concealing this fact and failing to inform the defendant Treasurer of his status as employee of the Government of the Philippine Islands.

13 Secs. 35, 36 and 37

14 Sections 69, 70, 71, 72.

15 Sec. 38, Assessment Law, section 70 RA 409

16 GR L-9796, July 31, 1957

17 The property in question was situated in Manila. The certificate of sale in favor of the buyer at the tax sale was issued on September, 1950, but said certificate was never registered with the Register of Deeds. On November 12, 1951, a deed of sale was issued in favor of the buyer, which deed was registered ond January 15, 1952.

18 Act 496, which established the Torrens system.

19 In this case, although no registration was made, actual notice was sent to the delinquent owner on August, 1950. Deposit was made of the amount due with the City Treasurer on June 20, 1951. The Court considered this deposit as an offer to redeem and held in favor of the delinquent taxpayer. Although the Court did not say so, it can be implied from this decision that in case there is no registration of the certificate of sale, the one-year period within which to redeem should be counted from the time of actual notice, if such there be.

Manansala v. Nawasa,[20] the plaintiff was the declared owner of the property, but at the time of the forfeiture in favor of the City of Manila for delinquent taxes, a case was pending before the courts in which Manansala's ownership of the land was questioned. This latter case was decided against Manansala, who in the meantime had redeemed the property from the City of Manila. A "certificate of repurchase" was issued in his favor and he thereafter claimed that his repurchase gave him title to the property, notwithstanding the decision in the first case, because, according to him, the City of Manila had conveyed to him the ownership which it had acquired by virtue of the forfeiture of the land in its favor. In affirming the decision of the lower court denying Manansala's claim, the Supreme Court discussed the effect of forfeiture under the Charter of the City of Manila. Under Section 73 of said Charter, it is only after the taxpayer, or anyone for him, had failed to redeem the property within the period of one year from the date of forfeiture that the sale shall become absolute in favor of the City. Quoting from the lower court decision, the Court further said: "To all intents and purposes, the City never became the absolute owner of said property such that it could convey title to it in favor of a third person, as its redemption by the plaintiff himself, who, as already stated, was the declared taxpayer, before the expiration of one year from the date of its forfeiture to the city, prevented such forfeiture from becoming absolute and the consequent confiscation of the said property in favor of the city." The effect of the repurchase, according the Court, was merely to create a lien upon the property in favor of the plaintiff for the amount paid by him to the city as redemption price of said property, and did not convey to him ownership thereof because the city had not yet become the owner thereof.

INTERNAL REVENUE TAXES —

1. *Income Tax* —

(a) *Compensation for expropriated property* —

The definition of gross income under section 29(a) of the National Internal Revenue Code includes "gains, profits, and income derived from salaries x x x, sales, or dealings in property, whether real or personal,x x x , and income derived from any source whatever." Whether compensation received from expropriated property is income or not, was decided in the case of *Blas Gutierrez & Maria Morales v. Court of Tax Appeals and Collector of Internal Revenue*.[21] The Court held that the transfer of property through condemnation proceedings, said property being justly compensated, is a "sale" of property and any income therefrom is definitely within the definition of gross income above-quoted. Such profit constitutes capital gain, and is taxable accordingly.[22] In this connection, the Court further stated that only the fair market price or value of the property as of the date of the acquisition thereof should be considered in determining the gain or loss sustained by the property owner when the property was disposed, without taking into account the purchasing power of the currency used in the transaction. As to the question when said income should be reported, the Court observed that the amount of compensation has to be credited as income in the year in which title to the land passes to the Republic of the Philippines, and such title does not pass until the indemnity is paid, notwithstanding the fact that possession may have been acquired by the Government earlier.[23]

20 GR L-10223, August 29, 1957
21 GR L-9738, May 31, 1957
22 Under section 34 of the Internal Revenue Code, if the capital asset has been held for not more than twelve months, 100% of the capital gain will be taken into consideration in computing the income tax. If held for more than twelve months, only 50% of the capital gain will be computed in the income for the purpose of the tax.
23 The Court cited the case of Calvo v. Zandueta, 49 Phil. 605, to support this last principle.

(b) *When partnerships are liable for income tax.*

Section 24 of the National Internal Revenue Code provides for the income tax liability of "every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized but not including duly registered general copartnerships." Section 84(b) in turn defines "corporation" to include "partnerships, no matter how created or organized, joint-stock companies, joint accounts (*cuentas en participacion*), associations or insurance companies, but does not include duly registered general copartnerships (*compañias colectivas*). Partnerships therefore, with the exception of duly registered general copartnerships, are liable for the corporate income tax. A duly registered general partnership, as such, is not liable for income tax, although under section 26 of the Tax Code, the partners are liable for income tax in their individual capacity. Our Supreme Court had occasion to interpret these provisions in the cases of *Eufemia Evangelista et al, v. Collector of Internal Revenue and Court of Tax Appeals,*[24] and *Collector of Internal Revenue v. Juan Isasi et al.*[25] In the first case, the petitioners who were brothers and sisters, had borrowed money from their father for the purpose of buying real properties to be leased out by them to third persons. They had not entered into any express agreement of partnership, but had agreed to divide among themselves the income derived from the rentals of said property. The Collector of Internal Revenue levied an income tax on the petitioners as a corporation under the above-mentioned sections 24 and 84(b) of the Tax Code. Petitioners claimed they were merely co-owners, and therefore the corporate income tax could not be imposed on them as a partnership. The Supreme Court brushed away this contention and held that the relationship between the petitioner had all the elements of a partnership. They had contributed to a common fund which was used to engage in real estate transactions for the purpose of obtaining monetary gain which would be divided among themselves. The Court explained: "To begin with, the tax in question is one imposed 'upon corporations', which, strictly speaking, are distinct and different from 'partnerships'. When our Internal Revenue Code includes 'partnerships' among the entities subject to the tax on 'corporations', said Code must allude therefore, to organizations which are *not necessarily* 'partnerships', in the technical sense of the term. Thus, for instance, section 24 of said Code *exempts* from the aforementioned tax 'duly registered general partnerships', which constitute precisely one of the most typical forms of partnerships in this jurisdiction. Likewise, as defined in section 84(b) of said Code, 'the term corporation includes partnerships *no matter how created or organized.*' This qualifying expression clearly indicates that a joint venture need not be undertaken in any of the standard forms, or in conformity with the usual requirements of the law on partnerships, in order that one could be deemed constituted for purposes of the tax on corporations. Again, pursuant to said section 84(b), the term 'corporation' includes, among others 'joint accounts (*cuentas en participacion*), and associations', *none of which has a legal personality of its own, independent of that of its members.* Accordingly, the lawmaker could not have regarded that personality as a condition essential to the existence of the partnerships therein referred to. In fact, as above stated, 'duly registered general copartnerships' — *which are possessed of the aforementioned personality* — have been expresly excluded by law from the connotation of the term 'corporation'."

In the case of *Collector of Internal Revenue v. Isasi, supra,* the issue was whether the partnership in question was exempt from the corporate income tax. The partnership's firm name carried the word "limited", but even a ca-

24 GR L-9996, October 15, 1957
25 GR L-9186, April 29, 1957

sual scrutiny of the agreement of partnership revealed that they followed the pattern set for the regular general partnership. Although it was a civil partnership, it was organized in accordance with the provisions of the Code of Commerce,[26] and was duly registered as such. Under these circumstances, the Court held that there was no reason why the partnership in question should not fall within the exemption provided in section 24 of the Internal Revenue Code. It was therefore freed from the liability of paying the corporate income tax

2. *Specific tax* —

Specific internal revenue taxes apply to things manufactured and produced in the Philippines for domestic sale or consumption and to things imported from the United States or foreign countries.[27] In case of *Cia. General de Tabacos de Filipinas and SS Co. of 1912 v. Collector of Internal Revenue*,[28] the chief of an ocean-going ship sold to two persons cigarettes of foreign manufacture taken from the ship's stores. These cigarettes were surreptitiously unloaded and withdrawn from the pier. Customs authorities levied the specific tax on cigarettes, but the ship agent sought refund of the same on the ground that under Section 125 of the National Internal Revenue Code it is the owner who is liable for specific tax, and since it was not the shipowner who had imported the cigarettes, there could be no liability for the tax. The Supreme Court upheld the collection on the ground that the agents of the shipowner brought or allowed to be brought into the Philippines the cigarettes belonging to it. This is importation, because to "import," according to the court, is to bring into a country merchandise from abroad.[29]

Under section 137(b) (2) of the Internal Revenue Code, a higher specific tax is imposed if the imported cigarettes exceed 71 millimeters in length. In determining the length of the cigarettes, should the filter tip be included? In the case of *Ligett & Myers Tobacco Co. v. Collector of Internal Revenue*,[30] the Supreme Court opined that said filter should be included in determining the length of the cigarette for the purpose of imposing a higher tax, because the law makes no distinction. It talks of the length of the cigarettes, and this length therefore should be as a whole. Precisely, the Court observed, the filter is one of the main features of the cigarette which induces the smoking public to buy it since it allegedly prevents the injurious effects of smoking on the health of the smoker.

3. *Privilege taxes on Business.* —

(a) *Percentage tax on sales* —

A percentage tax is levied on every original sale, barter, exchange or similar transaction for nominal or valuable consideration, intended to transfer ownership of the articles subject to the tax.[31] In the case of *Misamis Lumber Co. Inc. v. Collector of Internal Revenue*,[32] the Supreme Court distinguished a sales tax from a tax on consignments. The latter is a tax on the business of consigning commodities abroad from the Philippines. This was formerly covered

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26 The partnership was created while the old Civil Code was still in effect. Under the New Civil Code, the distinction between civil and commercial partnerships is abolished, and all the provisions on partnership found in the Code of Commerce are expressly repealed.
27 Sec. 123 National Internal Revenue Code
28 GR L-9071, January 31, 1957
29 The Court also stated that under the Code of Commerce, the ship agent or shipowner is liable for the acts of its master. In this case, the master had acknowledged the liability of the shipowner for the importation.
30 GR L-9415, April 22, 1957
31 Section 184
32 GR L-10131, Sept. 30, 1957

by Section 187 of the Internal Revenue Code, which was later repealed in order to encourage exports. In the case of sales taxes, however, the sale must be consummated in the Philippines in order to be subject thereto, and it is the *seller* who is subject to the tax, and not the *buyer*. Thus, even if the buyer intends to export what he buys, the sales tax paid by the seller does not thereby become a consignment tax on exports. The buyer, and not the seller, is the exporter of the goods. The sale itself is domestic and is therefore liable for the payment of sales tax in the Philippines.[33]

Among the transactions exempted from the percentage tax is the sale of agricultural products.[34] Formerly, the exemption applied to the sale of agricultural products is exempt from the percentage tax only if they are sold in their original form.[35] In the case of *Philippine Packing Corporation v. Collector of Internal Revenue*,[36] the Supreme Court stated that the exemption does not apply to agricultural products which are no longer in their original form because they have undergone the process of manufacture. In support of this view, the Court cited the explanatory note to the bill which affected the amendment,[37] wherein it was stated that the amendments were aimed at greater revenue by imposing a slight increase in tax rates and *greater coverage of the subjects of taxation*. The Court however held that although the petitioner is now subject to the percentage tax, the law can only affect it after, and not before, its effectivity, there being no provision in the mandatory law for its retroactive operation.[38]

(b) *Percentage tax on brokers.* —

Section 195 of the Internal Revenue Code imposes a percentage tax of 6% on the gross compensation received by brokers. In the case of *Soriano y Cia. v. Collector of Internal Revenue*,[39] the petitioner had entered into a contract with the Philippine Iron Mines Inc., under which the former was to perform some technical service to the latter and principally to negotiate and consummate the sale of all the products obtained from the latter's mining properties. The petitioner was in fact able to procure buyers from Japan and as a result they were paid 2-1/2% of the gross receipts. Petitioner paid the 6 percent broker's tax on this latter amount but later on claimed a refund thereof on the ground that commercial transactions abroad are not subject to the tax, and on the ground that the petitioner was not a broker. In holding that the petitioner is a broker, the Supreme Court cited Section 194 of the Internal Revenue Code which provides in part that "all persons, other than importers, manufacturers, producers or bona fide employees, who, for compensation or profit, sell or bring about sales or purchases of merchandise for other persons, or bring proposed buyers and sellers together, x x x." With respect to the other contention that commercial transactions abroad are not taxable, the court distinguished Section 193[40] and section 195 of the Internal Revenue Code. The latter imposes a tax on the gross compensation received by the broker and is therefore not an exaction on the business, nor on the business transaction it-

33 In this case, lumber was sold by the petitioners to companies abroad, under an agreement to place the lumber on board foreign merchants vessels in the port of Misamis, fixing a price FOB merchant vessels at said port. Under such an agreement, title to the goods passed to the buyers before it left the Philippines. The buyers, therefore, and not the sellers, were the exporters of lumber.

34 Section 188(b)

35 Sec. 188(b) as amended by RA 1612

36 GR L-9040, January 22, 1957

37 House Bill No. 5809

38 See Philippine Packing Corporation v. Collector of Int. Rev., GR L-9040, December 26, 1956, which was decided before the amendment took effect. See also Philippine Law Journal, Volume XXXII, No. 1, January, 1957, pp. 101-102.

39 GR L-8886, May 22, 1957

40 This has been repealed by section 13, RA 1612

self, but on the *compensation* resulting from said transaction which the petitioner received in Manila. Assuming therefore that the transactions were made abroad, the petitioner was still liable for the percentage tax under section 195.

(c) *Fixed tax on real estate dealers* —

Under Section 182 of the Internal Revenue Code, a fixed tax is imposed on real estate dealers, the amount depending on the annual income from the business. In *Eufemia Evangelista et al, v. Collector of Internal Revenue, supra,* the Supreme Court upheld the collection of the real estate dealer's tax from the petitioner because the records showed that they had habitually engaged in leasing their properties for a period of twelve years, and that their gross rentals ranged from ₱9000 to ₱17,500.[41]

4. Franchise Tax —

In the cases of *Visayan Electric Co. v. Collector of Internal Revenue*[42] and *Visayan Electric Co. v. Collector of Internal Revenue*[43] and *Cleomenes & Fortugaleza Jr. v. Court of Tax Appeals,*[44] the Supreme Court reiterated the principle laid down in the case of *Carcar Electric Ice Plant Co., Inc. v. Collector of Internal Revenue,*[45] that where the franchise was granted after the effectivity of Republic Act 49 amending section 259 of the Internal Revenue Code, the grantee should pay the rate established by said Code, as amended, that is, 5%, and not the rate established by Act 3636, i.e. 2%, although the franchise provides that it is subject to all the provisions of Act 3636. Section 10 of the latter act which fixes the amount of the tax at 2%, was amended by the abovementioned Republic Act 49 which was passed on October 1, 1946.[46] Furthermore, the Court held in the second case of *Visayan Electric Co. v. Collector* that where the franchise provides that the franchise tax shall be in lieu of all taxes on receipts, the grantee is exempt from income tax. In this connection, the Court said: "In view of the silence of Sec. 259 of the Tax Code, as amended, regarding tax exemptions, it could not have amended Section 10 of Act 3636. As we have held in the case of Carcar Company (*supra*), 'there is nothing incompatible or conflicting between the increased franchise tax under section 259 of the Tax Code and the exemption from any and all other taxes under Act 3636. Such exemption is part of the inducement for the acceptance of the franchise and the rendition of public service by the grantee'."

5. *Residence Tax.* —

The Residence Tax Law imposes a residence tax on corporations. The term "corporation" in this law has substantially the same meaning it has under the Internal Revenue Code, according to the Supreme Court in the case of *Eufemia Evangelista v. Collector, supra.* A partnership, therefore, no matter in what form it is organized, is liable to pay the residence tax on corporations.

6. *Exemption.* —

In the case of *Song Kiat Chocolate Factory v. Central Bank,*[47] our Supreme Court had again occasion to apply the well-settled principle of strict construc-

41 Under Sec. 182 and sec. 194(s), both as amended by RA 1612, real estate dealers are liable for this tax only if their annual income from buying, selling, leasing or renting the property is ₱3000 or more.
42 GR L-10099, L-10100, August 30, 1957
43 GR L-9685, October 30, 1957
44 GR L-8829, October 30, 1957
45 GR L-9257, Nov. 27, 1957; see Philippine Law Journal, Vol. XXXII, No. 1, January, 1957, p. 105.
46 The franchises in all these cases were granted after 1946.
47 GR L-8888, Nov. 29, 1957

tion of statutes exempting from taxation. The issue in this case was whether "cocoa beans" may be considered as "chocolate" for the purposes of exemption from the foreign exchange tax imposed by Republic Act 601.[48] The Court held that it may not because cocoa beans and chocolate are two different things — the former is the raw material and the latter is the finished product of such raw material after several processes, such as drying, roasting, grinding, sieving and blending.[49]

Apparently having the same principle of strict construction in mind, the Supreme Court in the case of *Marble Corporation of the Philippines v. Court of Tax Appeals and Collector of Internal Revenue*[50] upheld the Collector of Internal Revenue in his collection of an *ad valorem* tax on the marble chips and marble slabs extracted from the petitioner's mines. Petitioner contended that it was exempted from all internal revenue taxes because it was engaged in the business of mining marble and manufacturing limestone products therefrom, which is admittedly a new and necessary industry exempted from all internal revenue taxes under Republic Act No. 35. The Court said that if all the marble chips and slabs quarried from the petitioner's mines had been processed to produce limestone products, all such marble chips and slabs would be exempt. But the extraction and processing thereof to manufacture such industrial products constitute one process and must not be separated or divided.

When the intention of the law is clear, however, the Courts will not hesitate to apply the exemption. Thus, in the case of *J. Antonio Araneta v. Manila Pencil Co.*,[51] the Court held the respondent exempt from the transportation contractor's tax under section 192 of the Tax Code, in accordance with the Military Bases Agreement between the United States and the Philippines in March, 1947. Under this treaty, all concessions for the exclusive use of the U.S. military forces are exempt from all licenses, taxes, fees and the like.[52] The respondent had an exclusive contract with the United States Government whereby it undertook to haul and transport cargo for the U.S. Army stationed at Clark Field Air Base. Under said treaty, the following factors are, according to the Court, accessory to grant exemption: (1) That there is a grant or concession from the U.S. Government; (2) that the said authorities are under no limitation to grant the same; (3) that the services dispensed or the goods offered are for the exclusive benefit of the U.S. military forces, authorized civilian personnel and their families; and (4) that such services dispensed or the goods offered are only within the jurisdictional bounds of the bases. Since all the factors were present in this case, the respondent did not have to pay the tax in question.

8. *Liability for surcharge.—*

Under section 183 of the Internal Revenue Code, failure to pay the percentage tax on the date it is due will give rise to a surcharge of 25% of the

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48 This has been repealed by R.A. 1894 which took effect on January 1, 1956

49 The Court also observed that the subsequent amendment of the law substituting "cocoa beans" for "chocolate" was not a declaration or clarification of a previous purpose, but was a change of legislative policy, in view of the records of Congress which showed that in approving the amendment, Congress agreed to exempt cocoa beans instead of chocolate with a view to favoring local manufacturers of chocolate products. Besides, there was no provision for retroactive application of the amendment.

50 GR L-8677, December 28, 1957

51 GR L-8182, June 20, 1957

52 Article XVIII of said treaty provides: "1. It is mutually agreed that the United States shall have the right to establish on bases, free of all licenses fees, sales, excise or other taxes or imposts; Government agencies, including concessions, such as sales commissaries and post exchanges, masses and social clubs, for the exclusive use of the United States military forces and authorized civilian personnel and their families. The merchandise or services sold or dispensed by such agencies shall be free of all taxes, duties and inspection by Philippine authorities. x x x." (Underscoring ours).

tax. In the case of *Republic of the Philippines v. Luzon Industrial Corporation & Manila Surety & Fidelity Co.*,[53] the taxpayer sent its messenger to pay the tax to the City Treasurer of the City of Manila, on the day it was due. Due to the numerous taxpayers lined in front of said office, said messenger could not pay the tax before 4 p.m. On that same afternoon, the messenger mailed the check to the City Treasurer, who received it two days later. Citing *Jamora v. Meer*,[54] and Executive Order No. 92, series of 1957, the Supreme Court held that if payment of the tax is made through the mails, the remittance should be deposited in the mails in ample time to reach the office of the tax collector, on or before the close of business hours on the last day for the payment of the tax. And the collection of the surcharge, according to the Court, is mandatory on the Collector, who has no discretion in the matter.[55] Thus, although the circumstances of the case showed that the failure to pay on time was not due to the fault of the taxpayer, the court imposed the 25% surcharge.[56]

In the case of *Blas Gutierrez v. Court of Tax Appeals, supra*, the court refused to impose the 50% surcharge provided by law for false and fraudulent returns[57] because the taxpayer, in failing to report the compensation received from the Government for the expropriation of his land, had acted in good faith.[58]

9. *Collection of Taxes.—*

Delinquent taxes may be collected either by administrative proceedings or by an action in court. The former, which may either be a distraint of personal property or levy upon real property or interest therein, is summary in nature, and can be resorted to only within a limited period of time.

With respect to income tax, the cases of *Collector of Internal Revenue v. Aurelio P. Reyes*,[59] *Collector of Internal Revenue v. Zulueta*,[60] *Sambrano v. Court of Tax Appeals*,[61] and *Collector of Internal Revenue v. Cuenco*,[62] reiterate the well-settled principle that under section 52 (d) of the Internal Revenue Code, the Government cannot enforce collection by summary proceedings beyond three years from the time the return was filed.[63] When no return is filed, the three years should be counted from the time the return should have been filed.[64] However, should the taxpayer, by way of compromise, mortgage his property for the payment of such deficiency in the income tax, the sale of such mortgaged property for the satisfaction of the tax, even if it takes place beyond the three-year period, would be valid. Such sale would merely be, and is tantamount

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53 GR L-7992, October 30, 1957

54 74 Phil. 22. In this cited case, the Court declared the taxpayer delinquent who deposited his remittance by registered mail after 4 p.m. in the afternoon of March 20, 1939—the deadline for payment — such mail having been in due course received on March 21; and the Court approved the surcharge of 25%.

55 The Court cited Lim Co Chiu v. Posadas 47 Phil. 460.

56 To this decision, Justice Alfonso Felix strongly dissented mainly on the ground that under the special circumstances of the case; it would be unconscionable to impose the surcharge. He disagreed that the power to impose the surcharge is mandatory in view of the general powers allowed the Collector of Internal Revenue to make compromiss under sec. 309 IRC. He was in favor of applying by analogy Rule 27, Sec. 1 of the Rules of Court, under which the date of mailing of motions, pleadings, payments or deposits is considered as the date of their filing, payment or deposit in Court. The majority refused to apply this rule on the ground that it applies only to payments or deposits in court.

57 Sec. 72, Internal Revenue Code.

58 This is a reiteration of the principle laid down in Insular Lumber Co. v. Collector, GR L-7190, April 28, 1956. See Philippine Law Journal, Vol. XXXII, No. 1, January, 1957

59 GR L-8685, Jan. 31, 1957

60 GR L-8840, Feb. 8, 1957

61 GR L-8652 March 30, 1957

62 GR L-9117, 9118, April 29, 1957

63 See Collector v. Villegas 56 Phil. 554; Collector v. Haygood 65 Phil. 520; Phil. Sugar Development Co. v. Posadas 68 Phil. 216 and Collector v. Avelino GR L-9202, Nov. 19, 1956.

64 Collector v. Zulueta, supra

to, a foreclosure of the mortgage. Property not included in the mortgage, however, cannot be sold beyond the three-year period for the satisfaction of the tax.[65]

With respect to internal revenue taxes other than income tax, sections 331 and 332 of the Internal Revenue Code are applicable. Under said provisions, the assessment of the tax must be made within five years after the return, and collection of tne tax, either by summary proceedings or by court action, can be made within five years from such assessment. In the case of *Sambrano v. Court of Tax Appeals, supra,* the assessment of the percentage and residence taxes due from the petitioner was made after the expiration of the five-year period. Hence, according to the court, the liability for those taxes had already prescribed. However, the petitioner, after said period, executed a chattel mortgage in favor of the Government to secure the payment of such taxes. The Court considered the mortgage an acknowledgement of the existence of the tax liability, which amount therefore to the renewal of the obligation or a waiver of the benefit granted by law to the petitioner. He was therefore estopped from questioning the legality of the assessment, and hence, the tax could still be collected by a foreclosure sale of the mortgaged property notwithstanding the fact that the five-year period had already lapsed.

In the case of *Collector of Internal Revenue v. de los Angeles,*[66] the respondent filed an inheritance tax return and five months later, an assessment of such tax was sent to him by the Collector. Twenty years later, the Collector sought to collect said tax by summary distraint and levy. When the taxpayer questioned the legality of the distraint, the Collector contended that the limitation of five years from assessment within which to collect other internal revenue taxes has an exception as provided in section 331 — i. e., it does not apply to cases already investigated prior to the approval of the Internal Revenue Code.[67] The Supreme Court however, held this contention to be untenable because said exception is found in section 331[68] and refers only to the limitation established therein, i.e., limitation of the period for *assessment,* and not to the limitation of the period for the *collection* after assessment, which is covered by section 332.[69] Taxing acts, according to the Court, including provisions as to limitations on assessment and collection of taxes, should be construed liberally in favor of the taxpayer.

Under Section 333 of the Tax Code, the running of the period of five years provided in sections 331 and 332 will be suspended for the period during which the Collector of Internal Revenue is prohibited from making the assessment or beginning distraint or levy. Does the fact that the properties of

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65 Sambrano v. Court of Tax Appeals, supra.

66 GR L-9899. Aug. 13, 1957

67 The Internal Revenue Code took effect on July, 1939, four years after the case was investigated and tax assessed as a consequenc of such investigation.

68 "Sec. 331. **Period of limitation upon assessment and collection.** -- Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period. For the purposes of this section a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day: **Provided,** That this limitation shall not apply to cases already investigated prior to the approval of this Code."

69 "Section 332. **Exceptions as to period of limitation of assessment and collection of taxes.**
(a) x x x x x
(b) x x x x x
(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 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.

the taxpayer are under attachment suspend the period for distraint or levy? In the case of *Collector Internal Revenue v. Roberta Flores Vda. de Codiñera & Court of Tax Appeals*,[70] the warrant of distraint issued by the Collector could not be given effect because the properties of the taxpayer were under attachment in a civil case. The Collector, or his representative, however, did not file any third party claim or proof of debt in said civil case. The Supreme Court, upholding the decision of the Court of Tax Appeals, ruled that the running of the statute of limitations was not suspended under section 333 of the Internal Revenue Code. The Court observed that although it is true that when property is seized on attachment or execution by one officer, it is in custody of the law and cannot thereafter be seized on execution or attachment by another officer, nevertheless, successive liens may be created in favor of attaching creditors, and the officer who has custody can be summoned and charged as garnishee with respect to such property, the garnishment binding the property from the time of service of the writ on the officer, subject, of course, to prior levies or garnishments. The Court further observed that if the property attached is real property, the officer making the attachment does not take possession of the land, but simply fixes a lien thereon or record, and successive attachments can thereafter be placed upon it by the same or another officer, subject to the equity of all prior attachments. Under the above principle, the Collector in this case could have filed a claim before the court in the civil case and his claim could have been recognized, subject to the previous attachment. And his failure or neglect to do so cannot unjustly result in the suspension of the five-year period of limitation, to the prejudice of the taxpayer.

9. *Remedies of the Taxpayer.—*

a. *Injunction—*

Under section 11, of Republic Act 1125, the collection of taxes may be restrained by injunction if in the opinion of the Court of Tax Appeals, the collection may jeopardize the interest of the Government or the taxpayer. In such a case, the Court of Tax Appeals may require the taxpayer either to deposit the amount claimed for taxes or to file a surety bond for not more than double such amount with the Court.[71] This provision modifies the general principle that injunction is not available to restrain the collection of any internal revenue tax.[72] But the requirement of the bond as a condition precedent to the issuance of a writ of injunction applies only to cases where the processes by which the collection sought to be made are carried out in consonance with the law for such cases, and not when said processes are obviously in violation of the law to the extreme that they have to be suspended for jeopardizing the interests of the taxpayer.[73] Section 11 of Republic Act 1125 is therefore premised on the assumption that the collection is by itself in accordance with existing law. Hence, if the period within which summary collection may be made has already expired, and collection by such method is clearly illegal, injunction may be granted to restrain collection by said summary proceedings without requiring the taxpayer to file a bond or make a deposit in court, because in this case, the action of the Collector is contrary to law.[74]

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70 GR L-9675, Sept. 28, 1957

71 This provision was applied in the case of Castro v. Blaquera GR L-8429, Feb. 28, 1957

72 Sec. 305 Int. Rev. Code.

73 Collector v. A. P. Reyes, supra

74 Collector v. A. P. Reyes, supra, and Collector v. Zulueta, supra. These two cases reiterate the principle laid down in Collector v. Avelino GR L-9202, Nov. 19, 1957. In the case of Collector v. A. P. Reyes, Justice J.B.L. Reyes concurred in the result subject to his dissenting opinion in the Avelino case, wherein he opined that the law is clear in requiring a bond should injunction be granted, and that since this is an exception to the general rule that injunction cannot be granted, it should be construed strictly against the taxpayer.

b. *Recovery of the tax—*

Under section 306 of the Internal Revenue Code, an action for the recovery of a tax may be maintained regardless of whether such tax has been paid under protest or not. In the case of *Visayan Electric Co. v. City of Dumaguete,*[75] the Supreme Court held that this provision refers only to *national* internal revenue taxes and not to a tax assessed under a city or municipal ordinance. The Court stated that the requirement covering the payment of a tax under protest is statutory, and since in this case the ordinance in question required such protest before an action for recovery of the tax can be maintained, lack of the same will bar a refund of said tax.

Even if the tax has been paid under protest, if said tax is a national internal revenue tax, no action in court for the recovery of the same can be entertained unless a claim for refund has first been filed with the Collector of Internal Revenue within a period of two years from the payment of the tax. This claim for refund is mandatory, according to the Supreme Court in the case of *Johnston Lumber Co., Inc. v. Court of Tax Appeals,*[76] and it is a condition precedent to the recovery of taxes paid and should be averred in the complaint, otherwise it may be dismissed for lack of cause of action. In the aforementioned case, the taxpayer claimed that the requirement for claim for refund found in the Internal Revenue Code has already been repealed by Section 11, Republic Act 1125, which provides that an appeal from the decision or ruling of the Collector of Internal Revenue must be filed within thirty days after the receipt of such decision or ruling. The Supreme Court ruled that the two provisions are not inconsistent. Section 11 of Republic Act 1125 was intended "to cope with a situation where the taxpayer, upon receipt of a decision or ruling of the Collector of Internal Revenue, elects to *appeal* to the Court of Tax Appeals *instead of paying the tax.* For this reason, the latter part of said section 11 provides that no such appeal *would suspend* the payment of the tax demanded by the Government, unless for special reasons, the Court of Tax Appeals would deem it fit to restrain said collection. Section 306 of the Tax Code, on the other hand, contemplates of a case wherein the taxpayer *paid the tax,* whether under protest or not, and later on decides to go to court for its recovery." The Court therefore concluded that where payment has already been made and the taxpayer is merely asking for its refund, he must first file with the Collector of Internal Revenue a claim for refund before taking the matter to the Court, as required by Section 306 of the Internal Revenue Code and that appeals from decisions or rulings of the Collector of Internal Revenue to the Court of Tax Appeals must always be perfected within 30 days after the receipt of the decision or ruling that is appealed, as required by Section 11 of Republic Act 1125.

CUSTOMS LAW —

Under the customs law, all cargo intended to be landed at a Philippine port must be described in the manifest,[77] and all unmanifested merchandise which are required to be listed in the manifest are subject to seizure and forfeiture in favor of the Government.[78] In the case of *Commissioner of Customs v. Cia. General de Tabacos,*[79] the Supreme Court defined "cargo" to mean what is intended to be unloaded and landed at a port. And as a ship's provisions are not to be unloaded and delivered to any consignee, they are not supposed to be included in the manifest, but merely contained in a complete list of all ship's

75 GR L-10787, Dec. 17, 1957
76 GR L-9292, April 23, 1957. The Court cited Woo Poco & Co. v. Posadas 64 Phil. 640.
77 Sec. 1228 Rev. Adm. Code
78 Sec. 1363(g) Rev. Adm. Code
79 GR L-9901, Aug. 30, 1957

stores.[80] The Court therefore held that the cigareetes in question, which were forfeited by the customs authorities for not being listed in the manifest, were not proper subjects of forfeiture because they formed part of the ship's provisions.

On the other hand, when cargo is imported into the Philippines through false documents, declaration or invoices, it is subject to seizure and forfeiture under section 1363 of the Revised Administrative Code.[81] This provision was applied by the Supreme Court in the case of *Benito Sanchez v. Commissioner of* Customs,[82] where the ships manifest and all other pertinent papers showed the cargo to be only "commercial samples" of no "commercial value", when in fact they were merchantable articles. Since the entry of said cargo was made with fraudulent intent, the Supreme Court upheld the Court of Tax Appeals' decision that its forfeiture and sale at public auction were proper.

As to the meaning of "Customs Law", the Supreme Court in the case of *Estanislao Leuterio v. Commissioner of Customs*[83] cited Section 1419 of the vised Administrative Code and said that it includes not only the provisions of the Customs Law and regulations pursuant thereto but all other laws and regulations which are subject to enforcement by the Bureau of Customs or otherwise within its jurisdiction. Thus, since the imposition and collection of the advance sales tax, although provided for by the Internal Revenue Code,[84] is actually made by the Bureau of Customs, an undervaluation of imported goods for the purpose of evading such sales tax is a violation of the customs laws or the laws and regulations enforced by said Bureau. Hence, seizure and forfeiture of the said goods by the Bureau of Customs due to such fraudulent act of undervaluation are proper.[85]

COURT OF TAX APPEALS

1. *Its jurisdiction* —

Section 11 of Republic Act 1125 provides in part: "Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or of any province or city Board of Assessment Appeals may appeal to the Court of Tax Appeals within 30 days after the receipt of such decision or ruling. x x x" Under this provisions, it seems clear that only those *adversely* affected by a decision may appeal. The cases of *Genaro Ursal v. Court of Tax Appeals and Consuelo Noel*[86] and *Genaro Ursal v. Court of Tax Appeals and Alberto Mensueto*[87] raised the question of whether a city assessor may appeal to the Court of Tax Appeals from the

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80 Court cited US v. SS Islas Filipinas 28 Phil. 211 and US v. Steamship "Rubi" 32 Phil. 228.

81 "Sec. 1363. **Property subject to forfeiture under customs laws.** — Vessels, cargo, merchandise, and other objects and things shall, under the conditions herein-below specified, be subject to forfeiture:

x x x x x

(m) Any merchandise the importation or exportation of which is effected or attempted in any of the ways or under any of the conditions hereinbelow described.

x x x x x

3. Upon the wrongful making by the owner, importer, exporter, or consignee of any merchandise, or by the agent of either, of any false declaration or affidavit, touching such merchandises and in connection with the importation or exportation of the same.

4. Upon the wrongful making or delivery by the same person or persons, of any merchandise to be entered or passed at any customhouse by any other fraudulent practice, device or omission by means whereof the Government is or might be deprived of its lawful duties on such merchandise."

82 GR L-8556, Sept. 30, 1957

83 GR L-9810 April 27, 1957

84 Sec. 183(b)

85 Estanislao Leuterio v. Com. of Customs, supra

86 GR L-10123, April 26, 1957

87 GR L-10165 Aug. 30, 1957

decision of the City Board of Assessment Appeals. The City Assessor of Cebu in three cases had appealed to the Court of Tax Appeals the ruling of the Board of the Assessment Appeals reducing assessments made by him of certain real properties. The Supreme Court upheld the ruling of the Tax Court denying him the right to appeal to it and held that the assessor had no personality to appeal because he was not "adversely affected" by the ruling of the Board of Assessment Appeals. At most, the Court said, it was the city which had been adversely affected in the sense that it could not thereafter collect other realty taxes from the property owners.[88] The Court of Tax Appeals was not created to decide mere conflicts of opinion between administrative agencies or officers. According to the court, Republic Act 1125 is a complete law *by* itself and expressly enumerates the matters which the Court of Tax Appeals may consider; such enumeration excludes all others by implication.

Although the Court in the above *Ursal* cases said that it was not deciding the question as to whether the City of Cebu, which was admittedly adversely affected by the decision of the Board of Assessment Appeals, could appeal to the Court of Tax Appeals that question was finally answered in the negative by the ruling in the case of *Acting Collector of Customs v. Court of Tax Appeal and Commissioner of Customs.*[89] One of the issues raised in this case was whether the Collector of Customs, in his official capacity, can institute an appeal from a decision of the Commisisoner of Customs to the Court of Tax Appeals. In denying such right, the Court observed that under R.A. 1125, the right to appeal from decisions or rulings of the Collector of Internal Revenue, Commissioner of Customs or Board of Assessment Appeals, is allowed *only* to persons, associations, or corporations adversely affected by the same; and the Government is not one of those mentioned. To this, Justice Montemayor strongly dissented.[90] The only source of doubt, he said, about the right of the Government to appeal is that it is not expressly mentioned in Section 11 of R.A. 1125 among those entitled to appeal. According to him this omission is merely due to oversight or inadequacy in phraseology. He believed that the one who drafted the original bill may have thought that the enumeration in section 11 included the Government, for the reason that the main consideration or condition for the appeal is that the appellant must be adversely affected by the appealed decision or ruling, and it is clear that the Government being one of the real parties in interest, is liable to be affected adversely.

The words "Collector of Customs" in the above quoted provision of section 11 was held in the case of *Rufino Lopez & Sons Inc. v. Court of Tax Appeals*[91] to be a clerical error and should be read as "Commissioner of Customs", so that it is not the decision of the *Collector* of Customs which is directly appealable to the Court of Tax Appeals but the decision of the *Commissioner* of Customs. The Court came to this conclusion by comparing sections 7 and 11 of R.A. 1125. Under section 7, the Court has exclusive appellate jurisdiction to review by appeal the decisions of the *Commissioner* of Customs. On the other hand, Section 11 provides that those adversely affected by the decision or ruling of the *Collector* of Customs may appeal to the Tax Court. The Supreme Court said: "We are in entire accord with the Tax Court and the Solicitor General that a clerical error was commited in Section 11, mentioning therein the Collector of Customs. It should be, as it was meant to be, the Commissioner of

88 The Court however pointed out that it was not deciding whether the City could appeal to the Court of Tax Appeals.

89 GR L-8811, October 31, 1957

90 The majority was penned by Justice Felix. Justice Concepcion wrote a concurring opinion. Justice Alex Reyes concurred with the result, while Jusice Bautista Angelo and J.B.L. Reyes concurred with Justices Felix and Concepcion. Justice Montemayor wrote a dissenting opinion, to which concurred Justices Paras, Padilla and Endencia.

91 GR L-9274, February 1, 1957

Customs. There are several reasons in support of this view. Under the Customs Law, found in Sections 1137 to 1419 of the Revised Administrative Code, the Commissioner of Customs (Insular Collector of Customs) is the Chief of the Bureau and as such has all the Collectors of Customs of the different ports under him, over whom he exercises supervision and control. Under section 1380, any person affected or aggrieved by the decision of the Collector of Customs may appeal the decision to the Commisisoner of Customs. From this, it is clear that if we followed the literal meaning and wording of section 11 of RA 1125, in the sense that persons affected by a decision of the Collector of Customs may appeal directly to the Court of Tax Appeals, then the supervision and control of the Commissioner of Customs over his Collectors of Customs, and his right to review their decisions upon appeal to him by the persons affected by said decision would not only be gravely affected, but even destroyed. We cannot believe that that was the intention of the Legislature in passing RA 1125. It is more reasonable and logical to hold that in section 11 of the Act, the Legislature meant and intended to say, the Commissioner of Customs, instead of Collector of Customs in the first paragraph and the first part of the second paragraph of said section."

In the case of *Acting Collector of Customs v. Court of Tax Appeals and Commissioner of Customs, supra*, a question with respect to the interpretation of section 7(2) of RA 1125 arose. Said section provides that the Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal "(2) Decisions of the Commisisoner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs; x x x." Under this provision, does the Court of Tax Appeals have jurisdiction over appeals from the decision of the Commissioner of Customs which does not involve the payments of duties and charges subject to detention or seizure proceedings in the Bureau of Customs, but merely the banning of importation of obscene reading materials?[92] In construing the provisions, the Court looked into the explanatory note to the bill which later became RA 1125, under which note it is clear that the purpose of the Legislature in creating the Court of Tax Appeals is to create an agency which will review tax cases and at the same time expedite the collection of taxes. The Court noted that the final sentence of Section 7(2) "or other matters arising under the Customs law or other law or part of law administered by the Bureau of Customs" comes after an enumeration of the class of cases cognizable by the Court of Tax Appeals, namely, those involving liability for customs duties, fees or other money charges, and finally noted that by the doctrine of *ejusdem generis*, in order that the "other matters arising under the Customs law or other law or part of law administered by the Bureau of Customs" may come within the jurisdiction of the Court of Tax Appeals, they should involve also liability for payment of money to the Government.[93] The Court also observed that the title of RA 1125 is "An Act Creating the Court of *Tax* Appeals", and this law might be rendered unconstitutional if it is interpreted as including within the jurisdiction of said Court appeals from decisions of the Commissioner wherein no tax is involved, thus amplifying its

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92 This case involved the importation by the Philippine Education Co. of the issue of Pageant magazine which contained an article entitled: "Check your Sexlife against the New Kinsey Report." Upon the recommendation of the Board of Censors of the Bureau of Customs, the Collector ordered the seizure of such magazines under section 3 of the Philippine Tariff Act of 1909 which prohibits the entry of obscene and indecent reading materials in the Philippines. The Court, in deciding the case against the Collector, did not touch upon the question of the obscenity of the magazine.)

93 The Court cited Ollada v. Court of Tax Appeals, GR L-8878, July 24, 1957.

jurisdiction to cases not covered by the title of the law creating the same. The dissenting opinion[94] emphasized the fact that the phrase "or other matters arising under the Custom Law or other law or part of law administered by the Bureau of Customs" is separated from not only the first part but from the rest of the paragraph by a semicolon. From this physical construction of the section involved, the dissenters concluded that although the case does not involve payment of money to the Government, the Court of Tax Appeals has appellate jurisdiction over the same. They further fortified their opinion by citing the cases of *Millarez v. Judge Amparo*,[95] *Kho Kum Commercial v. Commissioner of Customs*[96] and *Namarco v. Macadaeg*,[97] wherein shipments of garlic were seized by the customs authorities. The Court of Tax appeals assumed jurisdiction over these cases, although the question involved was not the amount of assesment and payment of customs duties and charges on the merchandise imported, but that the same was of prohibited importation and therefore, was subject to seizure and confiscation.

2. *Procedure.* —

According to the case of *Eugenio Perez v. Court of Tax Appeals and J. Antonio Araneta*,[98] the general rules of procedure concerning the order of trial outlined in the Rules of Court shall govern the procedure before the Court of Tax Appeals. However, the Court held that the Court of Tax Appeals has discretion to deviate from the technical rules of evidence and if it does so, the exercise of such power is not subject to review by the Supreme Court.

MUNICIPAL TAXATION

A municipality has no power to tax unless it is expressly granted such power by the law.[99] And even then, it can only impose such kinds of taxes as are expressly provided and only over objects expressly enumerated.[100] Thus, a provision in the city charter which allows a tax on lumber yards does not carry with it the power to tax the lumber produced by such yards.[101]

The Revised Administrative Code expressly withholds from a municipal council the power to impose a tax: "in any form whatever upon goods and merchandise carried into the muicipality, or out of the same, x x x."[102] A municipal ordinance which imposes an inspection fee of ₱10.00 per head of cattle transported from the municipality is actually imposing an export tax prohibited by the aforementioned provision, since the purpose of exacting such fees is obviously for raising revenue under the guise of inspection fees.[103] But when the Charter of the City of Manila grants the city the power to tax dealers in tobacco, cigars and cigarettes, dealers are excepted therefrom, they are taxable by the City.[104] However, the power to tax dealers and retailers of merchandise cannot include the power to impose a tax on a non-profit, religious corporation which sells Bibles and other religious books, for such imposition would impair the free exercise and enjoyment of religion and worship as well

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94 See note 90, supra
95 GR L-8364, 8351, 8365, June 30, 1955
96 GR L-9778
97 GR L-10030, January 18, 1956
98 GR L-9193, May 29, 1957
99 Medina v. City of Baguio, 48 OG No. 11, 4769
100 We Wa Yu v. City of Lipa GR L-9107, Sept. 27, 1956. See Phil. Law Journal, Vol. XXXII, No. 1, January 1957, pp. 99 & 115.
101 Jos. S. Johnston & Sons Inc. v. Ramon Regondola GR L-9355, Nov. 26, 1957
102 Section 2287, Revised Administrative Code.
103 Agustin Panaligan et al v. City of Tacloban and the City Treasurer of the City of Tacloban, GR L-9819, Sept. 27, 1957
104 Manila Tobacco Assn. Inc. v. The City of Manila & M. Sarmiento GR L-9549, December 21, 1957

as the right to disseminate religious beliefs.[105] In this connection, a distinction should be made between a dealer and a manufacturer, for the latter becomes a dealer only if he carries on the business of selling his products at a store or warehouse apart from his own shop or manufactory.[106] Where a manufacturer of lumber in Palawan maintains a principal office in Manila, receiving orders for its products and accepting in said office payments therefor, he does not thereby become a dealer and is not subject to the Manila tax on dealers.[107] A dealer is not one who buys to keep or makes to sell, but one who buys to sell again; he is the middleman between the producer and the consumer of the commodity.[108] The placing of an order for goods and the making of payment thereto at a principal office does not transform said office into a store, for it is a necessary element that there also be goods stored therein or on display, and provided also that the firm or person maintaining that office is actually engaged in the business of buying and selling.[109]

In the case of *City of Manila v. Manila Remnant Remnant Co.*,[110] the Supreme Court laid down the test to determine whether a merchant is a retailer or wholesaler for purposes of a tax imposed by a city ordinance. According to the Court, it is not the amount of the bulk of the sale but the use and purpose for which the articles are bought. A sale of six bolts to a retail merchant engaged in the sale of cloth by the yard or meter should be considered as wholesale; and a sale of even of dozens of belts or hundreds of kilos of cloth or textiles to tailors, shirt factories or dressmaking establishments, should be regarded as retail for the reason that said textiles are consumed by said buyers in their business of converting the cloth into finished suits, dresses, shirts, etc. [111]

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105 American Bible Society v. City of Manila GR L-9639, April 15, 1957
106 Ibid. The Court cited the case of Central Azucarera v. City of Manila, GR L-7679, Sept. 25, 1955
107 City of Manila v. Bugsuk Lumber Co. GR L-8255 July 11, 1957
108 Ibid.
109 Ibid.
110 GR L-9195 January 30, 1957
111 Ibid. Court cited Tan v. de la Fuente GR L-3925, Sy Kion v. M. Sarmiento GR L-2934, City of Manila v. Manila Blue Printing 74 Phil. 316 and Buenaventura v. Collector of Customs, 50 Phil. 875.

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