

TAXATION—1958

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The year 1958 saw numerous Supreme Court decisions on the subject of taxation. A few of them were cases of first impression. The majority, however, merely reiterate principles laid down in earlier cases. One or two of them seem to have completely ignored past decisions, thus giving rise to some confusion.

This year's survey of said decisions is divided into seven main topics: Real Property Tax, Internal Revenue Taxes, Assessment and Collection, Remedies of Taxpayer, Customs Law, Exemptions, and Municipal Taxation.

A. REAL PROPERTY TAX—

Under Section 4 of Commonwealth Act 470, otherwise known as the Assessment Law,¹ real property should be assessed at its true and full value. In the case of *Hacienda Luisita v. Board of Tax Appeals*,² the taxpayer objected to the reassessment of its land after the liberation. It claimed that the Assessor had not made the assessment of its property at its true and full value, because he had not taken into consideration the losses suffered during the occupation, the amount invested by the taxpayer for rehabilitation and the mortgage to which the hacienda was subject and the losses during the first years of its operation right after the liberation. This contention was brushed aside by the Supreme Court which held that such items of losses, investments and indebtedness do not affect the value of the lands subjected to reassessment, in the absence of proof that the losses were due to deterioration of the lands themselves. The Court distinguished between the intrinsic value of the land and the profit or loss from its exploitation. It furthermore justified the increase in assessment and observed that values of lands tended to increase after liberation. Whether or not the rise was due to decrease of the purchasing power of the currency may be disputed, but the increase, according to the Court, undoubtedly exists.

In the same case, the Court held that the Assessor need not personally inspect the property, because in the absence of a legal prohibition, what he may do himself may be done by others for him.

B. INTERNAL REVENUE TAXES—

I. INCOME TAX—

1. Net worth method of determining income—

The law requires the filing of income tax returns for the purpose of enabling the Collector of Internal Revenue to determine and assess the tax due from each taxpayer. Although generally, such returns from the basis of his assessment, when the Collector has reason to believe that it is false, incomplete or erroneous, he has the authority and is duty bound to assess the proper tax on the best evidence obtainable.³ It is usual for the Collector to send investigators to examine the taxpayer's records and other pertinent data, and to base

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¹ This law applies only to municipalities and not to chartered cities, which are governed by their respective charters.

² G.R. No. L-7451, May 26, 1958.

³ Section 15 of the Internal Revenue Code.

his assessment on the facts uncovered by the investigation.⁴ In the cases of *Eugenio Perez v. Court of Tax Appeals*⁵ and *Collector of Internal Revenue v. Aurelio P. Reyes*,⁶ the novel question arose as to whether the Collector, in the performance of his duty to properly assess taxes, may employ the so-called "net worth" or "inventory" method in computing the net income of the taxpayer. Under this method, the Collector attempts to establish an "opening net worth", or total net value of the taxpayer's assets at the beginning of a given year. He then proves increases in the taxpayer's net worth for each succeeding year during the period under examination, and calculates the difference between the adjusted net values of the taxpayer's assets at the beginning and end of each year involved. The taxpayer's non-deductible expenditures, including living expenses are added to these increases, and if the resulting figure for any year is substantially greater than the taxable income reported by the taxpayer for that year, the Government claims the excess as representing unreported income.⁷ In holding that such "net worth" method was properly employed by the Collector in both cases, the Supreme Court noted that this method of determining taxable income has been an accepted practice under the United States Internal Revenue Code. To the contention that under section 38 of our Internal Revenue Code,⁸ the Collector is not authorized to change the method of accounting employed by the taxpayer unless such method does not clearly reflect income; the Court answered that this section has reference to true accounting methods and does not forbid the use of the net worth technique, which is not an accounting method at all, but merely an evidence of income.

Before the "net worth" method may be properly used, certain requisites must be present:

- (1) That the taxpayer's books do not reflect his correct income;
- (2) that the opening net worth be established with reasonable certainty;
- (3) that all relevant leads furnished by the taxpayer reasonably susceptible of verification be tracked down;
- (4) that the increase in net worth be in some way attributable to taxable income and
- (5) that proper allowance be made for personal and non-deductible expenditures, depreciation and non-taxable receipts.⁹

With respect to the first requisite, when the taxpayer himself has introduced evidence of the unreliability of his account books, the tax authorities cannot be expected to depend on them in making an assessment. Books of account do not prove *per se* that they are veracious, for they are often more consistent than truthful.¹⁰

As to the fixing of an opening net worth, where the Court of Tax Appeals has fixed it on the basis of the claims and evidence of the taxpayer himself, he cannot thereafter urge before the Supreme Court that he was worth more. And if his appeal to the Court of Tax Appeals was on the ground that the Collector's assessment is erroneous, it is incumbent on him to prove what his

⁴ *Central Azucarera de Tarlac v. Court of Tax Appeals & Coll. of Internal Rev.*, G.R. No. L-11761, July 31, 1958.

⁵ G.R. No. L-10507, May 30, 1958.

⁶ G.R. Nos. L-11584 & 11558, Nov. 25, 1958.

⁷ *Holland v. U.S.*, 348 U.S. 121, cited in *Perez v. Court of Tax Appeals*, *supra*.

⁸ "Sec. 38. *General rules.*—The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year, or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Collector of Internal Revenue does not clearly reflect the income. x x x"

⁹ *Collector v. Aurelio P. Reyes*, *supra*.

¹⁰ *Ibid*

correct and just liability is, by a full and fair disclosure of all pertinent data in his possession.¹¹

As to the duty of the tax authorities to pursue all leads furnished by the taxpayer to explain the increase of his assets, such duty is limited to those reasonably susceptible of verification and not too remote in time or too tenuously connected to the evidenced facts.¹²

With respect to the fourth requisite, the application of the net worth method does not require identification of the sources of the alleged unreported income.¹³ All that can be expected is evidence of the existence of sources of taxable income from which the undeclared income could be derived.¹⁴ Normally, acquisitions of property are made from accumulations of taxable income, and where not so made, it lies within the peculiar province of the taxpayer to explain how such acquisitions were made with non-taxable resources, and where no such explanations are made, it is not error for the court to conclude that the taxpayer's increase in net worth was due to undeclared taxable income.¹⁵

As to the last requisite, the claim for non-taxable receipts should be supported by competent evidence. If they are in the form of personal loans to a person regularly engaged in business, it is not enough to prove their existence by means of promissory notes or "vales" signed by the borrower, or of checks or vouchers evidencing payment. By the very nature of loan transactions between individuals such transactions are easily concocted, specially between friends and relatives. In order that such transactions may be proven there should be clear and convincing evidence independent of promissory notes, "vales," checks or similar documents. For instance, appropriate entries on the books of the taxpayer, specially if he is a businessman, would be competent evidence of personal loans.¹⁶

2. Meaning of "corporation" subject to tax.

For the purpose of the corporate income tax, a "corporation" includes partnerships, no matter how created or organized, joint-stock companies, joint accounts, associations or insurance companies, but does not include duly registered general copartnerships.¹⁷ The case of *Collector of Internal Revenue v. Laguna Tayabas Bus Co. & Batangas Transportation Co.*¹⁸ involved two distinct and separate corporations engaged in the transportation business and who entered into a Joint Emergency Operation agreement under which each contributed money to pay the common manager and other office personnel and to operate a common maintenance and repair shop. The common fund was also used to buy spare parts and equipment for both companies, to pay salaries of drivers, conductors and mechanics. Their gross income was merged, and after deducting the expenses of both, the net income was equally divided between them, without regard to expenses incurred in the maintenance and operation of each company nor to their individual income. The Collector levied a corporate income tax on this Joint Emergency Operation on the theory that it was a "corporation" within the meaning of the Internal Revenue Code, distinct and separate from each of the bus companies. In upholding the Collector, the Supreme Court cited the case of *Evangelista v. Collector of Internal Revenue*¹⁹

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Eugenio Perez v. Court of Tax Appeals, supra.*

¹⁴ *Collector v. Aurelio P. Reyes, supra.*

¹⁵ *Eugenio Perez v. Court of Tax Appeals, supra.*

¹⁶ *Collector v. Aurelio P. Reyes, supra.*

¹⁷ Sec. 84(b), Internal Revenue Code.

¹⁸ G.R. No. L-9692, January 6, 1958.

¹⁹ G.R. No. L-9996, October 15, 1957. See Volume XXXIII No. 2, *Philippine Law Journal*, page 807

and held that this was a "joint venture" or "joint account" which is expressly included in the definition of "corporation" in section 84(b) of the Internal Revenue Code.

II. ESTATE AND INHERITANCE TAX—

The estate of a non-resident alien is subject to the estate tax only with respect to properties situated in the Philippines. In the case of *Collector of Internal Revenue v. de Lara & Court of Tax Appeals*,²⁰ it appeared that one Hugo Miller was employed in the Philippines for several years but never had any residential house here. He lived in the Manila Hotel and later at the Army and Navy Club. His wife stayed in California, where his house was and where he went back several times during his employment here. The bulk of his savings and properties were in California and the only property he left here were shares of stock in Philippine corporations. In his will, which he made in California, he stated that he was a resident of California. He made the same statement in an insurance policy which he took a few years before his death. The Collector of Internal Revenue attempted to tax all the properties of Miller here as well as in the United States on the theory that although Miller was domiciled in California, his actual residence was Manila. In holding that the Collector's right to levy such tax was limited to Miller's properties in the Philippines, the Supreme Court made the observation that at the time the Internal Revenue Code was promulgated in 1939, the prevailing construction given by courts to "residence" and "domicile" was the same and that such terms were used interchangeably.²¹ The Court added that there is reason to believe that the Legislature adopted the American estate and inheritance tax system and that in the United States, for estate tax purposes, a resident is considered one who at the time of his death had his domicile in the United States. Under the above principles, therefore, the Court held that Miller was a resident or was domiciled in California at the time of his death.

The Court also reiterated the principle that although as a general rule personal property like shares of stock, is taxable at the domicile of the owner, where during his lifetime, the deceased extended his activities with respect to his intangibles so as to avail himself of the protection and benefits of our laws, in such a way as to bring his person or property within the reach of the Philippines, the reason for the single place of taxation no longer obtains.²² Consequently, the Court held that Miller's intangible property in the Philippines was subject to our estate tax, although he was not a resident here.²³

With respect to our inheritance tax, Miller's administrator could not be subject to the same due to the reciprocity provision found in section 122 of the Tax Code,²⁴ which exempts property of a resident of a foreign country from such tax on his intangible property if the laws of such foreign country contains a similar exemption in favor of Filipino non-residents. In the later case of

²⁰ G.R. Nos. L-9456 & 9481, January 6, 1958.

²¹ Cited *Velilla v. Posadas*, 62 Phil. 624.

²² Cited *Wells Fargo v. Collector*, 70 Phil. 325.

²³ If California laws had contained a provision exempting Filipino non-residents from estate tax, Miller could have been exempted under section 122 of the Internal Revenue Code. See discussion on this section, *infra*.

²⁴ Section 122 in part provides: "Provided however, That in the case of a resident, the transmission or transfer of any intangible personal property, regardless of its location, is subject to the taxes prescribed in this Title: And provided, further, That no tax shall be collected under this title in respect of intangible personal property (a) if the decedent at the time of his death was a resident of a foreign country which at the time of his death did not impose a transfer tax or death tax of any character in respect of intangible personal property of citizens of the Philippines not residing in that foreign country, or (b) if the laws of the foreign country of which the decedent was a resident at the time of his death allow a similar exemption from transfer taxes or death taxes of every character in respect of intangible personal property owned by citizens of the Philippines not residing in that foreign country."

Collector of Internal Revenue v. James Norton,²⁵ the Supreme Court stated the conditions for exemption under said section 122 as follows:

"Under provision (a)—

(a) That the decedent was a resident of a foreign country at the time of his death;

(b) That said foreign country did not impose a transfer or death tax of any character; and

(c) That intangible personal property of non-resident Filipinos situated in that foreign country is exempt from transfer or death taxes of any character.

"Under provision (b)—

(a) That the laws of the foreign country of a nonresident decedent allow a similar exemption from transfer taxes or death taxes of every character; and

(b) That the intangible personal property of non-resident Filipinos situated in that foreign country is exempt from transfer taxes or death taxes of every character."

According to the Court, "foreign country" as used above may refer to the Federal Government or the individual states of the Union, for each state of the United States is supreme and independent, and has its own government with full powers of taxation and appropriation of the revenue derived therefrom.²⁶ Since the law of California contained a similar exemption with respect to inheritance taxes,²⁷ heirs of California residents leaving intangible property here would not be subject to our inheritance tax. The purpose of the exemption is to reduce the burden of multiple taxation, which otherwise would subject a decedent's intangible personal property to the inheritance tax, both in his place of residence and domicile and the place where the property is found.²⁸

III. PERCENTAGE TAX—

1. On sales—

The case of *Western Mindanao Lumber Development Co. Inc. v. Court of Tax Appeals and Collector of Internal Revenue*²⁹ involved the question as to whether the Collector had rightfully imposed the percentage sales tax on the goods in question. At the time the goods were sold, Republic Act No. 41 was still in force exempting from the said tax all goods consigned abroad by the producers thereof. The goods in question were shipped "FOB Basilan" and were consigned abroad. All freight and insurance charges were paid by the foreign buyers, and payment for said shipments were effected in Manila. The Court held that under such circumstances, the sale was consummated here by the producer and thus the goods were consigned abroad, not by the producer, but by the foreign buyer. The sale therefore was not exempt under said Republic Act No. 41 but was one properly taxable as an original sale of goods

²⁵ G.R. No. L-10482, May 28, 1958.

²⁶ *Collector v. James Norton*, *supra*.

²⁷ Sec. 13851 of the Revenue Code of California provides—

"Intangible personal property is exempt from the tax imposed by this part if the decedent at the time of his death was a resident of territory or another State of the United States or of a foreign state or country which then imposed a legacy, succession, or death tax in respect to intangible personal property of its own residents but either: (a) Did not impose a legacy, succession, or death taxes of every character if the Territory or other State of the United States of foreign state or country in which the non-resident resided allowed a similar exemption in respect to intangible personal property of residents of the Territory or State of the United States or foreign state or country of residence of the decedent."

²⁸ *Collector v. de Lara*, *supra*.

²⁹ G.R. No. L-11710, June 30, 1958.

within the Philippines.³⁰ In this connection, the Supreme Court observed that Republic Act No. 894 which provides that no percentage tax may be levied on goods shipped abroad "irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods or products exported" was not applicable to the case because the goods in question were shipped before said Act was passed.

2. On imports—

Section 183(b) of the Internal Revenue Code which imposes a sales tax on imported articles, provides that said tax shall be paid in advance by the importer "based on the import invoice value thereof, certified to as correct by the Philippine Consul at the port of origin if there is any, including freight, postage, insurance, commissions, customs duty, and all *similar charges*" (Italics supplied). In *Genato Commercial Co. v. Court of Tax Appeals*,³¹ the Supreme Court held that the amount paid by an importer to a local bank in the purchase of foreign exchange to carry out the importation is embraced in the terms "all similar charges" and should therefore be added to the invoice value of the goods for the purpose of determining the amount of the import tax. The law requires that the assessment should include all "similar" charges which would necessarily increase the landed cost of the merchandise imported and which the importer has to pay to complete his importation.

3. On operators of Sugar Centrals—

Section 189 of the Tax Code provides for a tax of 2% "on the gross value in money of all sugar manufactured or milled" by proprietors or operators of sugar centrals, "including the by-products of the raw materials from which said articles are produced or manufactured, such tax to be based on the actual selling price or market value of those articles at the time they leave the factory or mill warehouse . . ." By authority of this provision, the Collector of Internal Revenue required the Central Azucarera de Tarlac to pay a 2% tax on the gross value of molasses and sugar amounting to ₱1,689.69 allegedly withdrawn from its sugar central from 1947 to 1954. The Central contested the legality of the assessment on the ground that the molasses and sugar in question were not sold but converted into alcohol in its own distillery located in the sugar central compound. It insisted that the transfer of the sugar from the central to its own distillery was not a withdrawal within the purview of the above provision of the Code, and since no sale of the sugar and molasses was involved, no tax liability accrued. When the case reached the Supreme Court on appeal from the Court of Tax Appeals, the Collector's action was upheld.³² According to the Court, the law indicates that actual sale of the product is not essential to the accrual of the tax, since the tax is to be based on the actual selling price or *market value* of these articles at the time they leave the factory or mill warehouse, without taking into account the reason why the article is withdrawn. The fact that the distillery and the sugar mill are in the same compound, does not prove that they are not independent units. It was not contended that all the sugar produced by the mill is converted into alcohol; and the manufacture of alcohol from sugar is clearly distinct from the processing of sugar cane into sugar. Since the manufacturer of the alcohol does not have to be the manufacturer of the sugar, the Court opined that taxwise the routing of sugar and

³⁰ Cited *Misamis Lumber Co., Inc. v. Collector*, G.R. No. L-10131, Sept. 30, 1957, see XXXIII, No. 2 Philippine Law Journal, p. 308.

³¹ G.R. No. L-11727, September 29, 1958.

³² *Central Azucarera de Tarlac v. Court of Tax Appeals*, G.R. Nos. L-11760 & L-11761, July 31, 1958.

molasses to the distillery was as much a withdrawal of sugar from the central as a removal thereof for the purpose of selling it.

As to the allegation that the transfer of the sugar and molasses to the distillery was not in the course of business, no profit consideration being involved, the Court pointed out that the taxpayer would not consider spending for the conversion into alcohol unless this process resulted in some benefit to it . . . The intent to gain, according to the Court was undoubtedly present from the very start.⁸³

It was also argued by the Central Azucarera that, where sugar and molasses are manufactured into alcohol, the production of those raw materials from sugar cane is but a step in the manufacture of alcohol and should, therefore, not be taxed where the producer and the manufacturer are one and the same person, since the manufacture of alcohol is itself taxed. In other words, the Central argued that where the manufacturer of alcohol himself produced the raw materials used in the manufacture of alcohol, he should not be taxed for planting the sugar cane, for milling the same and for converting its juice into sugar or molasses, for if each and everyone of those steps in the production of alcohol were taxed, the alcohol industry would be made to bear the burden of double or multiple taxation. The Court however stated that no extra burden would result in view of the deductions allowed in the last paragraph of section 189 to the following effect:

"Where articles are manufactured out of materials subject to tax under this section, the total cost, as duly established, of said materials shall be deductible from the gross selling price or gross value in money of the manufactured articles."

4. On publishers—

In the cases of *Collector of Internal Revenue v. University of Santo Tomas and Court of Tax Appeals*⁸⁴ and *University of Santo Tomas v. Collector of Internal Revenue*,⁸⁵ the University of Santo Tomas requested from the Collector of Internal Revenue the refund of the tax representing 2% of the gross receipts of the UST Press from the other departments of the University in connection with the binding or printing of forms, advertising cards, envelopes, programs, prospectus, stationaries and different school organs, and also those receipts for the printing and binding of the University annuals. With respect to the receipts of the UST Press from the other departments of the University, the Supreme Court held that the UST Press is an integral part of the University, performing interrelated and coordinated functions, and that the system of accounting employed was being made for accounting purposes only, and that for the purpose of taxation, it is the university as a legal entity which shoulders taxes that may be due from any of its departments, because the individual existence or personality of the various departments are merged into one taxable being—that of the University of Santo Tomas; and that inasmuch as the university itself was not subject to tax for its gross receipts from its own departments, the tax corresponding thereto had been erroneously collected.

With respect to the assessment on the undeclared receipts from the printing and binding of the University annuals, the University of Santo Tomas claimed that the same is void because said receipts are exempted under section 191 which provides in part:

⁸³ Justices Felix and Bautista Angelo dissented on the ground that there was no withdrawal of sugar but merely a physical transfer from one building to another. Purpose of removal must be in the course of business or as a result of a business transaction.

⁸⁴ G.R. No. L-11274, Nov. 28, 1958.

⁸⁵ G.R. No. L-11280, Nov. 28, 1958.

" . . . publishers, except those engaged in the publication of any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale, and which is not devoted principally to the publication of advertisements, printers and bookbinders, shall pay a tax equivalent to three per centum of their gross receipts."

The Court held that the tax was rightfully assessed. According to the Court, by the very nature of these annuals, they do not have fixed prices for subscription and sale, because the cost of printing depends on the thickness of the annuals to be printed and the number of copies to be made. Neither are they "newspapers, magazines, review or bulletins" within the meaning of the law.

IV. SPECIFIC TAX—

Specific taxes apply among others, to things manufactured or produced in the Philippines for domestic sale or consumption and such taxes are payable by the manufacturer, producer, owner, or person having possession of the same.³⁶ And, except as otherwise specially allowed, such taxes shall be paid immediately before removal from the place of production.³⁷ However, an exemption exists in favor of domestic denatured alcohol, which may be withdrawn from a registered distillery or bonded warehouse without the prepayment of the specific tax, when such alcohol is to be used for certain specified purposes.³⁸ In the case of *Central Azucarera de Tarlac v. Collector of Internal Revenue*,³⁹ the petitioner's alcohol was passed upon by the Denaturing Committee of the Bureau of Internal Revenue as duly denatured alcohol. It turned out however, that it was not denatured but rectified alcohol, and thus was not exempted from the specific tax. The Court held that the neglect or omission of the Denaturing Committee could not estop the government from collecting the tax.⁴⁰ As a licensed manufacturer of rectified and denatured alcohol, the petitioner was responsible for the quality of its products and should have complied with the laws and regulations bearing on the denaturation of alcohol. It could not escape responsibility by passing it over to the Denaturing Committee concerned primarily with the prevention of frauds on the revenue.

V. COMPENSATING TAX—

In the case of *Manila Gas Corporation v. Collector of Internal Revenue*,⁴¹ the petitioner's franchise provided for a 2½% tax of its gross receipts, said payment to be in lieu of all taxes, insular, provincial and municipal, "except taxes on its real estate, buildings, plant, machinery" and other personal properties. The Collector of Internal Revenue assessed and collected the compensating tax on machinery and equipment purchased by the petitioner from abroad and used in connection with its business, on the theory that such tax was not covered by the exemption since it is a property tax. Petitioner claimed that it is an excise tax or a tax on business from which it was exempt under its charter, citing as support the fact that section 190 providing for such tax is found in Title V of the National Internal Revenue Code entitled "Privilege Taxes on Business and Occupation." The Supreme Court however, reiterating the ruling in the case of *Panay Electric Co. v. Collector*⁴² and held it to be a property tax. According to the court, the taxability or non-taxability of an article or transac-

³⁶ See sections 128 and 124 of the Internal Rev. Code.

³⁷ *Ibid.*

³⁸ See section 128, Int. Rev. Code.

³⁹ G.R. No. L-11902, September 30, 1958.

⁴⁰ Citing *Bacrach Motor Co. v. Uson*, 50 Phil. 981 and *Pineda v. Court of First Instance of Tayabas*, 52 Phil. 803.

⁴¹ G.R. No. L-11784, October 24, 1958.

⁴² G.R. No. L-6768, July 30, 1955.

tion under Chapter I of Title V of the Tax Code is determined not by the title of the Chapter but by the particular provision of law involved.

Prior to Republic Act No. 1612, the compensating tax provided for by Section 190 of the Tax Code could be imposed only on goods directly received from abroad and therefore did not cover an automobile bought from a tax-exempt person, like a United States Embassy official, by a non-exempt individual.⁴³ Such compensating tax was intended as a substitute of the sales tax that would otherwise be paid by an importer who resold the goods within Philippine jurisdiction. It is not an import tax.⁴⁴ However, since the amendment introduced by Republic Act No. 1612, tax-free articles brought or imported into the Philippines by persons or entities exempt from tax and subsequently sold to non-exempt persons, are subject to the compensating tax since the purchasers thereof are considered importers.

VI. AMUSEMENT TAX—

In the case of *Collector of Internal Revenue v. Totoy Oteyza*,⁴⁵ the Supreme Court held that ballet performances are included under Republic Act 722 which exempts "operas, concerts, recitals, dramas, painting and art exhibitions, flower shows, and literary or oratorical or musical programs" from the amusement tax. Such ballet performance, according to the Court, besides being an art *par excellence* is in fact included in the terms "concert," "opera" or "recital."

However, performances and floor shows held at a night club are not "musical programs" under the above mentioned law and are not exempt from the amusement tax. In the case of *Wong & Lee v. Collector of Internal Revenue*,⁴⁶ the petitioner operated under a lease contract the Riviera, a night club in Pasay City. Acting as promoter and booking agent of the Xavier Cugat Orchestra, Ted Lewin entered into a contract with the petitioners whereby the orchestra, after its matinee and evening performances at the International Fair Auditorium, was to play and hold floor shows at the Riviera. Under the contract, Ted Lewin was to get all the cover charges collected from the patrons of the night club as his compensation for sponsoring the playing and holding of floor shows, while petitioners were to get the proceeds derived from food and drinks served within the club premises during said period. The Collector assessed the amusement tax on all the gross receipts, including Lewin's share. The petitioners urged that the floor shows were exempt as "musical programs" under Republic Act 722. The Supreme Court said however, that the exemption contemplated by said law refers to musical programs, operas, concerts, recitals, etc., where the exhibitions or performances have for their primary purpose the propagation and development of art and culture, and where the element of profit is only incidental. According to the Court, the petitioners' purpose in engaging the services of the Cugat Orchestra was not to propagate or promote art and culture among their patrons. Judging from the gross receipts realized by them during the period in question, which run to several thousand pesos, the Supreme Court held that the primary objective of the petitioner was to popularize their night club and to bolster the sale of drinks and food in their establishment, and that furthermore, the patrons of the Riviera during those nights, went there mainly to dine and "dance to the tune of the world renowned orchestra", because if their purpose was for culture and for the sake of art, they could have

⁴³ *Collector v. Viduya*, G.R. No. L-10808, Feb. 28, 1958.

⁴⁴ *Ibid.*

⁴⁵ G.R. No. L-10290, May 28, 1958.

⁴⁶ G.R. No. L-10155, August 30, 1958.

gone to the International Fair Auditorium to hear the same orchestra play with a better repertoire, and at less expense to themselves.

The petitioners also contended that, assuming that such gross receipts were subject to the tax, the same should not be paid by themselves but by Ted Lewin who received the amount, the petitioner merely acting as collectors thereof. The Court however pointed out that under Section 260, the *lessee* of a place of amusement is liable for the tax.⁴⁷ The tax is therefore imposed on the lessee or operator of night clubs and not on any person to whom said gross receipts are destined and eventually paid.

VII. FRANCHISE TAX—

Section 259 of the Internal Revenue Code imposes a franchise tax on all gross earnings or receipts of the business covered by the franchise. The amount of the tax is either 5% of such earnings or such taxes, charges or percentages as are specified in the special charters creating the franchise, whichever is higher, unless such charter precludes the imposition of the higher tax. In the case of *Panay Electric Co. Inc. v. Collector of Internal Revenue*,⁴⁸ the question arose as to whether the franchise tax imposed by the charter of the petitioner was an internal revenue tax or not. The Supreme Court held that since franchise tax is enumerated under section 18 of the Tax Code as one of the national internal revenue taxes, there can be no question as to its nature as an internal revenue tax, whether it be imposed by the National Revenue Code itself or by the special charter. Section 259 clearly refers to both. Being an internal revenue tax, a claim for its refund therefore is governed by Section 306 of the Tax Code.⁴⁹

C. ASSESSMENT AND COLLECTION—

I. Means of collection and prescription thereof—

That income taxes may be collected summarily—i.e. by distraint on personal property or levy on real property—without the help of the courts only within a period of three years from the filing of false fraudulent or erroneous returns,⁵⁰ was reiterated in the cases of *Collector of Internal Revenue v. Querol & Court of Tax Appeals*,⁵¹ *Collector of Internal Revenue v. Florencio Solano*⁵² and *Chua Joy v. Collector of Internal Revenue*.⁵³ The last mentioned case involved not only income tax but also war profits taxes. Since war profits taxes are in the nature of income taxes,⁵⁴ the three year period of limitation prescribed in sec. 51(d) of the Internal Revenue Code on income tax applies also to such war profits tax.⁵⁵

⁴⁷ "Sec. 260. Amusement taxes.—There shall be collected from the proprietor, lessee, or operator of theaters, cinematographs, concert halls, circuses and other places of amusement the following taxes: x x x

"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, x x x ." (Underscored supplied.)

⁴⁸ G.R. No. L-10574, May 28, 1959.

⁴⁹ On this point, see discussion on Remedies of the Taxpayer, *infra*.

⁵⁰ Section 51(d). This section however speaks merely of the period when the assessment of the income tax should be made, and, unlike sec. 382, does not provide for a period within which collection by summary proceedings may be made. The decisions of the Supreme Court have the effect of broadening the literal meaning of the provision by holding that summary collection of the income tax must be made within three years.

⁵¹ G.R. No. L-11456, April 28, 1958.

⁵² G.R. No. L-11476, July 31, 1958.

⁵³ G.R. No. L-10961, Feb. 25, 1958.

⁵⁴ See *Testate Estate of Olimpio Fernandez, Rep. of the Phil. v. Angelina Casan et al.*, G.R. No. L-9141, Sept. 25, 1956. See *Philippine Law Journal, Annual Survey on Taxation*, Vol. XXXII, No. 1, p. 97.

⁵⁵ Section 9 of Rep. Act 55 which imposes the War Profits Tax provides: "All administrative, special and general provisions of law including 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 the law, and to the tax herein imposed."

In the case of *Collector v. Solano, supra*, the taxpayer filed his income tax returns for 1948 on time, but such returns were neither erroneous, false nor fraudulent. Solano however, failed to pay the tax and therefore a warrant of distraint and levy was issued on August, 1953. On August 24, 1955, a writ of garnishment was served on Solano's employer. Hence, this petition for injunction was filed. The Collector claimed that since section 51(d) which prescribes the three year limitation speaks only of neglect or refusal to make returns and of erroneous, false or fraudulent returns, and that since none of these conditions was present in this case, said three year limitation on summary distraint did not apply to Solano, but the five-year period prescribed by Section 332(c) of the Code.⁵⁶ The Court, however held that the three-year limitation in section 51(d) applied to Solano. To follow the Collector's argument, said the Court, would lead to the absurdity of having an innocent taxpayer who had filed his returns on time subject to summary distraint for a period of five years, while one who had filed false or fraudulent returns, or made no return at all, may not be so subject after a period of only three years.

As to when the court action for the collection of income tax should be brought, the Supreme Court in the same Solano case applied Section 332(c) and held that such action may be brought only within five years from the time of the assessment of the tax. And, the court observed, assuming that the answer of the Collector of Internal Revenue to Solano's petition for injunction is equivalent to a "court action", since the assessment was made on March 31, 1949 and the answer to the petition was made on December 10, 1955, the right to collect, even by court action, had also been extinguished by prescription. From this decision, therefore, it may be said that although the five year limitation imposed by section 332(c) on the right of the Collector to collect by summary distraint or levy does not apply to income tax, the same five-year limitation provided by said section 332(c) on collection by court action applies to all internal revenue taxes, including income tax, where the return is made by an innocent taxpayer. However, where no return has been made, or where the return is false or fraudulent, section 332(c) cannot apply, and the court action may be brought within ten years from the discovery of the omission, falsity or fraud, as provided by Section 332(a).⁵⁷

In resumé therefore, under sections 51(d) and 332 of the Internal Revenue Code and under present Philippine decisions, the following rules govern assessment and collection of internal revenue taxes:

1. As to income tax—

(a) Assessment of the tax should be made by the Collector within three years from the filing of returns or in case no return was made, within three years from the time it should have been made.⁵⁸

(b) Summary collection by distraint or levy may be made only within three years from the time of the filing of the return, whether it be true, false, fraud-

⁵⁶ "Sec. 332(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."

⁵⁷ *Collector v. Aurelio P. Reyes, supra*.
⁵⁸ Sec. 51(d), Internal Rev. Code. In spite of the clear provision of the law, our Supreme Court in the case of *Collector of Internal Revenue v. Suyoc Consolidated Mining Co.* (1-11627, Nov. 25, 1958) cited Section 331 instead of Section 51(d) and used the five-year period instead of the three-year period. This however did not affect the conclusion of the case and cannot be said to be an authority for the proposition that the assessment of income tax should be made within 5 years. See discussion of this case in *Waiver of Prescription, infra*.

ulent or erroneous, or, where no return has been filed, within three years from the time the return should have been filed.

(c) Collection by court proceedings must be made within five years from the time the assessment of the tax was made by the Collector, when the return is made by an innocent taxpayer.⁵⁹ Where no return is made or the return is false, or fraudulent, then the court action may be brought within ten years from the discovery of the omission or fraud.⁶⁰

2. As to other internal revenue taxes.—

(a) Assessment of the tax must be made within five years from the return,⁶¹ unless the return is false or fraudulent or no return was made, in which case assessment must be made within ten years from the discovery of the falsity, fraud or omission.⁶²

(b) Collection, either by summary proceedings or by court action, may be made within five years from the assessment.⁶³ But in case of false or fraudulent return or failure to make a return, *court action* may be brought even without assessment, within ten years from the discovery of the falsity, fraud or omission.⁶⁴

(c) Where the taxpayer filed a return without being guilty of falsity or fraud, court action must be brought within five years from the assessment.⁶⁵

The period of five years in section 331 within which assessment of internal revenue taxes other than income tax should be made, begins to run from the time the return was filed. If certain taxable items, however, were omitted in said section, no additional return for the same is required before the five-year period may run. Such omission of taxable items in the return cannot be regarded as a case of *failure* to file a return, particularly where the taxpayer's good faith is not questioned and intent to evade the tax is not charged. The returns filed, although incomplete, operate as sufficient notice to the Collector of Internal Revenue to make his assessment and start the running of the period of limitation.⁶⁶

II. Waiver of Prescription.—

Although as a general rule, extension of time for collection of taxes may be made only by express agreement in writing between the Collector of Internal Revenue and the taxpayer,⁶⁷ the taxpayer may by his acts or conduct, be prevented from setting up the defense of prescription. In the case of *Collector of Internal Revenue v. Suyoc Consolidated Mining Co. et al.*,⁶⁸ the taxpayer company first asked for a one year extension within which to pay the amount assessed against it as income tax. The extension was granted only for three months, and the taxpayer company failed to pay it within said period of extension. Upon receiving another letter of demand from the Collector about three years later, the company asked for a reconsideration and reinvestigation of the assessment, which was granted. Six months later another assessment was made by the Collector in an amount greater than the first assessment. About a year later, after some correspondence between the Collector and the

⁵⁹ *Collector v. Solano, supra.*

⁶⁰ *Collector v. Aurelio P. Reyes, supra.*

⁶¹ Section 331, Int. Rev. Code.

⁶² Sec. 332 (a), Int. Rev. Code.

⁶³ Sec. 332 (c), Int. Rev. Code.

⁶⁴ Sec. 332 (a), Int. Rev. Code.

⁶⁵ Sec. 332 (c), Int. Rev. Code.

⁶⁶ *Central Azucarera de Tarlac v. Court of Tax Appeals G.R. No. L-11761, July 31, 1958.*

⁶⁷ Sec. 332 (c), Int. Rev. Code.

⁶⁸ G.R. No. L-11627, Nov. 25, 1958.

company, the Collector made another assessment, this time lowering the assessment. After several other negotiations conducted at the request of the respondent, including an appeal to the Conference Staff of the Bureau of Internal Revenue, the assessment was finally reduced to an amount which was about ₱9000 less than the original assessment. The taxpayer filed a petition with the Court of Tax Appeals and claimed that the right to collect the tax had already prescribed since more than five years had elapsed since the original assessment.⁶⁹

The Supreme Court observed that it is obvious that the Collector refrained from collecting the tax by distraint or levy or by proceeding in court within the five-year period from the filing of the return due to the several requests of the company for extension, to which the Collector yielded to give it every opportunity to prove its claim regarding the correctness of the assessment. After inducing the Collector to delay collection as he in fact did, the Court considered it unfair for the taxpayer to take advantage of such desistance to elude his deficiency income tax liability to the prejudice of the Government invoking the technical ground of prescription. According to the Court, the government was, for good reasons, persuaded to postpone collection to make the taxpayer feel that the demand was not unreasonable or that no harrassment or injustice is meant by the government.⁷⁰

A strong dissent however was voiced by Justices Montemayor and Padilla. According to them, the suspension of the running of the statute of limitations can only take place for such period during which the Collector is prohibited from making the assessment or beginning distraint or levy or proceeding in court, and for sixty days thereafter.⁷¹ Nowhere, according to the dissent, does the law recognize that a simple request for reconsideration of an assessment, unaccompanied by any positive indication that the taxpayer is waiving his right to assert the defense of prescription has the effect of suspending the running of the statute of limitations. The dissenting opinion emphasized that prescription in the assessment and in the collection of taxes is provided by the Legislature for the benefit of both the Government and taxpayer; for the Government for the purpose of expediting the collection of taxes, so that the agency charged with the assessment and collection may not tarry too long or indefinitely to the prejudice of the interest of the Government which needs said taxes to run it; and for the taxpayer so that within a reasonable time after filing his return, he may know the amount of the assessment which he is required to pay, whether or not such assessment is well founded and reasonable so that he may either pay the amount of the assessment or contest its validity in court.

III. *Effect of mistake of government agents on the right to collect.*—

It is a cardinal principle of law that the government is not estopped by the neglect or omission of its officers or agents.^{72a} Consequently, even where the insufficient payment is made on the strength of a circular issued by the Bureau of Internal Revenue, it cannot be considered final and conclusive when it is discovered later that an error was committed.⁷² The government can never be estopped to collect legitimate taxes by the error committed by its agents.⁷³

⁶⁹ See previous discussion on the proper period of prescription for the collection of income tax, *supra*.

⁷⁰ See also *People v. Ching Lak* (1-10809, May 23, 1958) where the Court held that a petition for reconsideration of assessment may affect the suspension of the prescriptive period for the collection of taxes, but not the prescriptive period for the institution of a criminal action for violation of the Int. Rev. Code.

⁷¹ Sec. 388, Int. Rev. Code.

^{72a} *Bachrach Motor Co. v. Uson*, 50 Phil. 931; *Pineda v. Court of First Instance of Tayabas*, 58 Phil. 803, cited in *Central Asucarera de Tarlac v. Collector*, G.R. No. L-11092, Sept. 30, 1958.

⁷² *Genato Commercial Co. v. Court of Tax Appeals*, L-11727, Sept. 29, 1958.

⁷³ *Ibid.*

Similarly, where the Collector discovers that his assessment was for an erroneous amount, he may, upon discovery of his error, increase such amount by amending such assessment. And this he can do even as late as in his answer to a petition filed against him before the Court of Tax Appeals, more specially so if his mistake is in good faith.⁷⁴ Anyway, there is a prescriptive period for assessment, and since the Collector can always make a subsequent reassessment to collect additional sums, he should be allowed instead to amend his original assessment and thus avoid multiplicity of suits.⁷⁵ Besides, the hearing before the Court of Tax Appeals partakes of a trial *de novo*, and after hearing, the Court of Tax Appeals determines the amount of tax collectible whether resulting in increase or reduction of the assessment appealed to it.⁷⁶

IV. Penalties for nonpayment.—

a. Surcharge—

The 50% surcharge provided by law⁷⁷ for fraud in the filing of income tax returns is properly imposed where the taxpayer has made a substantial under declaration of income. Thus, where a taxpayer's undeclared income is more than 100% of the declared net income, there can be no doubt that such a huge underdeclaration could not have been the result of honest mistake.⁷⁸ And this would be specially true if coupled with an overstatement of deductions.⁷⁹ And this finding of fraud, on the part of the Court of Tax Appeals is a finding of fact which the Supreme Court will not reverse unless "clearly erroneous."⁸⁰

However, the 25% surcharge imposed by the Tax Code for failure to file returns cannot be imposed where such failure to file was due to a reasonable cause.⁸¹ Thus, in the case of *Collector of Internal Revenue v. Laguna Tayabas Bus Co.*, *supra*, since the respondent companies were of the honest belief that their agreement of Joint Emergency Operation did not constitute them into a "corporation" within the meaning of the Tax Code, and since both corporations had filed separate returns, they could not be held liable for the 25% surcharge for failure to file the corporate return.

b. Compromise of criminal action.—

In the case of *Collector of Internal Revenue v. UST*, *supra*, the Collector sought to recover, in addition to the deficiency percentage tax and surcharge, the sum of P100 as compromise penalty in extra-judicial settlement for violation of the provisions of sections 183(a) and 191 of the Internal Revenue Code penalized by section 209 of the same Code. The Supreme Court in refusing to grant such recovery stated that compromise implies mutual agreement between the parties involved in the compromise and one party cannot exact it from or impose it upon another. In this case, the UST had rejected the compromise. If the Collector was convinced that the UST was criminally liable for the violation of the tax law, the Court said that he was free to institute criminal proceedings, but could not arbitrarily impose the penalty.

c. Prescription of criminal action—

Where a taxpayer has violated any provision of the Internal Revenue Code, for which violation a penalty of fine or imprisonment is provided by law, the

⁷⁴ *Collector of Int. Rev. v. Laguna Tayabas Bus Co.*, *supra*.

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ Section 72, Int. Rev. Code.

⁷⁸ *Collector v. A. P. Reyes*, *supra*.

⁷⁹ See *Peres v. Court of Tax Appeals*, *supra*.

⁸⁰ *Ibid.*

⁸¹ Sec. 72, Int. Rev. Code.

criminal action for the same should be brought within five years from the violation of the law, or if the same be not known at the time, from the discovery thereof.^{81a}

D. REMEDIES OF TAXPAYER—

I. Claim for refund—

Under section 306 of the Internal Revenue Code, no suit in court may be brought for the recovery of any national internal revenue tax alleged to have been erroneously or illegally assessed or collected, until a claim for refund has been filed with the Collector of Internal Revenue, and in any case, no such suit may be brought after the expiration of two years from the date of payment of the tax. Clearly, therefore, the taxpayer must make a claim for refund and bring a court action. A claim for refund not followed by judicial action avails the claimant nothing.⁸² And the taxpayer is entitled to refund only if he brings the action within two years from the date of payment. In other words, all overpayment or illegal collection made beyond the two-year period may not be refunded.⁸³ Said period should be counted from the *date of the court action*, and not from the date of the claim for refund. Thus in the case of *Panay Electric Co. v. Collector of Internal Revenue*,⁸⁴ since the court action was brought on August 20, 1952, although the claim for refund was made on April 16, 1952, under a strict interpretation of the law, the petitioner could get a refund for taxes illegally collected two years from August 20, 1952—i.e., only taxes paid on or after August 20, 1950 would be refundable. Those paid before are not. However, the Supreme Court relaxed the rule due to the peculiar circumstances of the case,⁸⁵ more important of which was the fact that the Collector was willing to refund all taxes from the date of the claim for refund. This offer on the part of the Collector can be considered an exercise of his power to compromise cases involving erroneous collection of taxes paid for a period of two years from the date of claim for refund.⁸⁶ Furthermore, the Court stated, the Collector told the taxpayer that steps had already been taken to refund the taxes, which act the Court considered as a waiver of the prescriptive period. Under these circumstances, the Supreme Court allowed a refund of all taxes paid since the *date of the claim for refund*.

II. Doctrine of equitable recoupment—

The doctrine of equitable recoupment means that when the refund of a tax illegally or erroneously collected or overpaid by a taxpayer is barred by the statute of limitations and a tax is being presently assessed against said taxpayer, said present tax may be recouped or set off against the tax, the refund of which has been barred. The same thing would be true where the Government has failed to collect a tax within the period of limitation and said collection is already barred, and the taxpayer has to his credit a tax illegally or erroneously collected or overpaid, whose refund is not yet barred, the Government need not make refund of all the illegally or erroneously collected tax, but it may set off

^{81a} Sec. 1, Act 3326 as amended by Act 3585. Applied in the case of *People v. Ching Lak*, *supra*.

⁸² See *Panay Electric Co. v. Collector*, G.R. No. L-10574, May 28, 1958.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ The petitioner in this case had paid a 5% franchise tax under RA 39 amending sec. 259 of the Int. Rev. Code, in spite of the fact that its charter imposed only a 2% franchise tax. Subsequently, the decision of the Supreme Court in the case of *Phil. Railway v. Collector*, G.R. No. L-13859, March 25, 1952, was released and under this, RA 39 was held inapplicable to holders of franchises which fix a specific rate of franchise tax.

⁸⁶ Section 309, Int. Rev. Code.

against it the tax whose collection is barred by the statute of limitations.⁸⁷ In the case of *Collector of Internal Revenue v. University of Santo Tomas*, *supra*, the Supreme Court was faced with the question whether this doctrine is applicable in this jurisdiction. The Court of Tax Appeals, although it had found that the amount erroneously collected from the University of Santo Tomas could not be refunded because the claim was filed beyond the two-year period, applying the doctrine of equitable recoupment, held that the percentage tax and surcharge which were valid charges against the University, may and should be set off or credited against and to the extent of the amount of taxes erroneously collected. The Supreme Court however, reversed the Tax Court and held that this doctrine is not applicable in this jurisdiction. To start with, the Court observed, this is a common law principle and is not binding on our courts, and there is nothing in our laws, particularly the tax law, authorizing its acceptance and application. Said the Court:

" . . . We fully realize the advantages of the doctrine both to the Government and to the taxpayer, but we feel and we believe that the drawbacks to the acceptance and enforcement of equitable recoupment far outweigh any advantage and benefit to be derived therefrom, and unless and until the Legislature sees fit and finds it beneficial and necessary to introduce this doctrine into this jurisdiction by means of legislation, we are not prepared, neither are we inclined to accept and introduce the same as a legal principle which the courts may invoke and apply in the course of interpreting and applying the tax laws.

" . . . With this doctrine enforced and available to both parties, the tax collecting agency would be tempted to delay and neglect the collection of taxes within the period set by the law, confident that when it finally wakes up from its lethargy, it could still recover the tax it failed to collect by having it set off or recouped from any tax which it may have illegally collected from the taxpayer. And this is not without its resulting danger, because a collector, to play safe and have a fund available for said set off and recoupment of a tax which he had failed and neglected to collect, may be tempted to make illegal assessments and collections, and the taxpayer would be helpless because however illegal and unauthorized the assessment may be, the Collector can always enforce the same by levy and distraint, and the only remedy of the taxpayer would be to file a formal demand for refund, followed by a court suit to enforce the demand. As regards the taxpayer, he may also be tempted to delay and neglect the filing of the corresponding suit for refund of a tax illegally or erroneously collected, trusting that he can always recover or be credited with the same or part thereof by refusing to pay a valid tax assessed against him and compelling the Government to set off the same against a tax payment he could no longer recover."

The Supreme Court concluded with the statement that the acceptance and adoption of such doctrine should be left to the sound discretion of the Legislature.

III. Injunction—

Under Section 805 of the Internal Revenue Code, no court has authority to grant an injunction to restrain the collection of any internal revenue tax. This provision was however modified by section 11 of Republic Act No. 1125, under which the Court of Tax Appeals may suspend said collection, when in its opinion, the collection may jeopardize the interest of the Government and/or taxpayer, and may require the taxpayer either to deposit the amount claimed or to file a bond for not more than double the amount.

In the cases of *Collector of Internal Revenue v. Aznar*,⁸⁸ *Chua Joy v. Collector of Internal Revenue*⁸⁹ and *Collector of Internal Revenue v. Quero*,⁹⁰ our Supreme Court reiterated its previous ruling that when income taxes are sought to be summarily collected by distraint or levy beyond three years from the filing

⁸⁷ *Collector v. UST & Court of Tax Appeals*, GJR, No. 11274, Nov. 28, 1958.

⁸⁸ G.R. No. L-10370, Jan. 31, 1958.

⁸⁹ G.R. No. L-10961, Feb. 28, 1958.

⁹⁰ G.R. No. L-11456, April 28, 1958.

of retruns,⁹¹ the Court of Tax Appeals may issue an injunction restraining such manner of collection. And in such a case, the injunction may be issued without requiring the taxpayer to file a bond because the summary collection is illegal, it being beyond the period allowed by law.⁹²

The injunction cannot be granted by any court other than the Court of Tax Appeals. A Court of First Instance therefore has no power nor jurisdiction to restrain collection of taxes, and the mere fact that the complaint asks for damages in addition to the restraint of collection, does not alter the situation because such prayer is merely incidental to the main case and the Court of Tax Appeals can grant such damages if and when the evidence so warrants.⁹³ The Court of First Instance may therefore be restrained by the Supreme Court from issuing an injunction suspending the collection of a national internal revenue tax.⁹⁴

IV. Appeal to the Court of Tax Appeals—

Under section 7 of Republic Act 1125, the Court of Tax Appeals has exclusive appellate jurisdiction over decisions of the Collector of Internal Revenue involving disputed assessments. In such cases, therefore, the Court of First Instance has no jurisdiction to entertain an appeal from the Collector's ruling.⁹⁵ In the case of *Carlos Ledesma v. Court of Tax Appeals & Blaquera*,⁹⁶ the Supreme Court stated that one reason why Republic Act 1125 transferred tax cases from the Court of First Instance to the Court of Tax Appeals was that, considering the many cases on different subject matters which the Courts of First Instance had to hear and determine, oftentimes disputed tax assessment cases took a long time to decide, and so for the purposes of expediency and prompt collection of taxes, the Court of Tax Appeals was created, and was given a limited time within which to determine said cases.⁹⁷

The appeal must be filed by the taxpayer within thirty days from the receipt of the Collector's decision. In the case of *St. Stephen's Assn. & St. Stephen's Chinese Girls School v. Collector of Internal Revenue*,⁹⁸ the Collector sent an Assessment Notice to the petitioner dated October 15, 1954. A request for the withdrawal and cancellation of the assessment notice was made by petitioners on November 13, 1954. The denial of the request was received by the taxpayer on April 21, 1955. On May 5, 1955, another request for reconsideration was made which was again denied. Notice of such denial which was received on July 25, 1955, stated that: "This decision becomes final thirty days after your receipt hereof unless an appeal is taken to the Court of Tax Appeals within the same period, in accordance with the provisions of Republic Act 1125." Within thirty days from receipt thereof, the taxpayers filed a petition for review with the Court of Tax Appeals, which dismissed the appeal on the ground that the thirty-day period of appeal should be counted from the petitioner's receipt of assessment notice, and that said period had already expired. On appeal to the Supreme Court, it was held that where the taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he believes he is not liable therefor, the assessment becomes a "disputed assessment" that the Collector must decide, and the taxpayer can appeal to the Court

⁹¹See Sec. 51(d) and previous discussion on means of collection, *supra*.

⁹²The Court cited the cases of *Collector v. A. P. Reyes*, G.R. No. L-8685, Jan. 31, 1957; *Collector v. Zulueta*, G.R. L. No. L-8840, Nov. 19, 1958 and *Collector v. Avelino*, G.R. No. L-9202, Nov. 19, 1958. See also *Phil. Law Journal*, Vol. XXXIII, No. 2, p. 214.

⁹³*Blaquera v. Rodriguez*, G.R. No. L-11192, April 16, 1958.

⁹⁴*Blaquera v. Rodriguez*, G.R. No. L-11295, March 29, 1958.

⁹⁵See *Blaquera v. Rodriguez*, G.R. No. L-11192, April 16, 1958.

⁹⁶G.R. No. L-11848, Jan. 29, 1958.

⁹⁷Thirty days from submission. Sec. 18, RA 1125.

⁹⁸G.R. No. L-11288, August 21, 1958.

of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, in accordance with paragraph (1) of section 7 of Republic Act 1125, conferring appellate jurisdiction upon such Court to review "decisions of the Collector of the Internal Revenue in cases involving *disputed assessments* . . ." Therefore, said the Supreme Court, the period of appeal must be counted from the date the petitioners *received the decision* of the Collector on the disputed assessment, and not from the time they received said assessment. In this case, the final decision of the Collector was the one received on July 25, 1956. His prior letters were considered by the Court as tentative in character since he had merely held the matter under advisement pending his final determination of the arguments submitted by the petitioner. Consequently, the appeal had been filed within the time allowed by law.

E. CUSTOMS LAW—

Under section 1363 of the Revised Administrative Code, the Collector of Customs is authorized to seize and forfeit any merchandise the importation or exportation of which is effected by any false declaration or affidavit or false invoice. In the case of *Que Lo Pay v. Central Bank*,⁹⁹ an exporter had stated in his export entry that the shipment in question consisted of 50 bundles of salted dried fish. It turned out however, that among the fish, the exporter had concealed gold bars and US money bills and treasury warrants. The Collector of Customs seized the same on the ground that their exportation was prohibited by law and that the exporter was guilty of making a false statement in his export entry. In an action brought by the exporter for the recovery of the merchandise, the Supreme Court held that, although the exporter had been acquitted in a criminal complaint for the exportation of prohibited merchandise,¹⁰⁰ there was enough justification for the Collector of Customs to order the seizure of the articles for the same were not declared by the exporter in the export entry issued to him. Since the exporter was guilty of a false declaration, there was a proper seizure under section 1363 of the Revised Administrative Code.

Under sections 1370-1373 and 1380 of the Revised Administrative Code, appeal may be taken from the decision of the Collector to the Commissioner of Customs provided said appeal is filed within fifteen days after notification of the decision. The case of *Stonehill Steel Corp. v. Commissioner of Customs*¹⁰¹ involved a claim for refund of customs duties paid about four years earlier. Said duties were paid voluntarily because they were then validly imposed. Subsequently, however, a law was passed which the importer claimed to have the effect of exempting him from the customs duties paid by him, the exemption having a retroactive effect. Among others, the question arose as to whether the fifteen-day period of appeal above-mentioned was applicable to the importer in this case. The Supreme Court held that it was not. The Court observed that sections 1370-1373 and 1380 of the Revised Administrative Code apparently refer to a ruling or decision of the Collector of Customs wherein liability for customs duties is determined, in which case, the party adversely affected by such ruling, after paying the amount of the assessment, may make a protest and the Collector will reexamine the matter, and should he overrule the protest, the party aggrieved is required to appeal to the Commissioner within fifteen days after notice, otherwise the ruling of the Collector becomes final and conclusive. Said sections, according to the Court, referring as they

⁹⁹ G.R. No. L-11019, Nov. 28, 1956.

¹⁰⁰ Central Bank Circular No. 20 which prohibited importation of the merchandise in question was held inapplicable to the exporter because of failure of its publication in the Official Gazette.

¹⁰¹ G.R. No. L-10841, March 24, 1958.

do to assessments made by a Collector alleged to be illegal, cannot refer to a case of refund of duties which have been validly assessed and the amount voluntarily paid by the importer, without any objection or protest.

Should the importer fail to appeal to the Commissioner after an adverse decision of the Collector of Customs, he cannot resort to the Court of Tax Appeals, because he has failed to exhaust his administrative remedies.¹⁰² In this connection, the Supreme Court in the case of *Sampaguila Shoe & Slipper Factory v. Commissioner of Customs*¹⁰³ repeated its previous statement in the case of *Lopez & Sons v. Court of Tax Appeals*¹⁰⁴ that the words "Collector of Customs in section 11 of Republic Act 1125 providing for appeal to the Court of Tax Appeals should be read as "Commissioner of Customs," so that what may be appealed to the Court of Tax Appeals is the decision, not of the Collector of Customs, but of the Commissioner of Customs.

F. EXEMPTIONS ¹⁰⁵—

New and necessary industries are exempted from payment of all taxes.¹⁰⁶ In the case of *Collector of Internal Revenue v. Industrial Textiles Co.*,¹⁰⁷ the respondent was engaged in the manufacture of jute bags and was considered a new and necessary industry. Its exemption certificate provided that all "articles, goods or materials used exclusively in the new and necessary industry" were exempt from taxes. The respondent imported cement for use in the construction of its building. The Collector of Internal Revenue imposed a compensating tax on the cement on the ground that it was not within the exemption, cement not being used in the manufacture of jute bags. In deciding the case in favor of exemption, the Supreme Court declared that the main purpose of the law in exempting new and necessary industries is to encourage the establishment and operation of such industries. The Court observed that materials for the manufacture of jute bags constitute only one of the factors necessary for their production. The same generally requires buildings or structures to house the machinery, equipment, tools and materials necessary to manufacture said articles, goods or merchandise, the production of which constitutes a new and necessary industry. Provided that the cement in question is used exclusively in the construction of said buildings and structures, which in turn would be exclusively used for the manufacture of said articles, goods or merchandise, the said cement, according to the Court, is within the exemption; otherwise, the goal of the law could not possibly be achieved.

Under the Military Bases Agreement between the United States and the Philippines, 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, messes 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 the Philippine Authorities. . . ."¹⁰⁸

Does this mean that the income derived by a Filipino concessionaire in the operation of his concession is exempt from income tax on the receipts thereof?

¹⁰² *Sampaguila Shoe & Slipper Factory v. Commissioner of Customs*, G.R. No. L-10285, Jan. 14, 1952.

¹⁰³ *Ibid.*

¹⁰⁴ 53 OG No. 10, p. 3065. See also Phil. Law Journal, Annual Survey of 1957 cases on taxation, Vol. XXXIII, No. 2, p. 818.

¹⁰⁵ Some of the cases dealing on exemption were discussed under the corresponding tax involved, *supra*.

¹⁰⁶ See Rep. Act No. 901.

¹⁰⁷ G.R. No. L-10986, April 25, 1958.

¹⁰⁸ Article XVIII, Par. 1.

In the cases of *Cantlas et al v. Republic of the Philippines*¹⁰⁹ and *Sergio Naguiat v. J. Antonio Araneta*,¹¹⁰ this question was answered in the negative. The Supreme Court considered the above-mentioned agreement as limiting exemption from the licenses, fees and taxes enumerated therein to the right to establish Government agencies, including concessions, and to the merchandise or services sold or dispensed by such agencies. The income tax, which is certainly not on the right to establish agencies, or on the merchandise or services sold or dispensed thereby, but on the owner or operator of such agencies, is logically excluded. The payment by the latter of the income tax, observed the Court, is perfectly consistent with and would not frustrate the obvious objective of the agreement, namely, to enable the members of the US Military Forces and authorized civilian personnel and their families to procure merchandise or services within the bases at reduced prices.¹¹¹ Furthermore, the Court pointed out the fact that exemption from the income tax is treated under different provisions of the treaty, under which Filipino citizens are not included.

G. MUNICIPAL TAXATION—

It is a well-known and well-settled principle that a municipal corporation has no inherent power of taxation and that its power to tax is derived from express provision of law, and that in case of doubt, it must be resolved against the corporation. The cases of *Serafin Saldaña v. City of Iloilo*¹¹² and *Santos Lumber Co. v. City of Cebu*¹¹³ reiterated this principle. In the first case, the City of Iloilo passed an ordinance imposing a fee for the issuance of a license permit to carry food supply and labor animals outside of the municipality. The fee was fixed per head of animal—for example, ₱10 per head of large cattle, ₱5 per pig or goat. This amount, according to the Court, was way in excess of the cost of inspection and issuance of the permits and were therefore clearly imposed for the purposes, not of regulation, but of raising revenue, making it a tax and not merely a license fee. Nowhere in the Charter of the City of Iloilo is it authorized to collect taxes for taking out animals. Furthermore, under section 2287 of the Revised Administrative Code, a municipal council has no power to impose a tax in any form upon goods or merchandise carried out of the municipality and any attempt to do so shall be void. The Court therefore concluded that the ordinance was ultra vires the city and therefore null and void.

In the case of *Santos Lumber Co. v. City of Cebu, supra*, the defendant passed an ordinance imposing a tax on the first local sale of lumber. The charter of the city empowered the Municipal Board "to tax, fix the license fee for, regulate the business, and fix the location of . . . lumber yards, ship yards, the storage and sale of gunpowder, tar, pitch . . ." ¹¹⁴ The Court held that although the City may tax the sale of gunpowder, tar, pitch, etc., it had no power to tax the sale of lumber but merely the business of lumber yards. The ordinance was therefore void.

In the case of *Zosimo Rojas & Bros. v. City of Cavite*,¹¹⁵ the City of Cavite, in pursuance of a power granted to it by its charter, imposed a license fee of ₱800 per annum on proprietors of theaters. The City however passed another ordinance imposing an additional tax of ₱0.03 and ₱0.05 on tickets for every

¹⁰⁹ G.R. No. L-11805, May 21, 1958.

¹¹⁰ G.R. No. L-11694, Dec. 22, 1958.

¹¹¹ *Naguiat v. Araneta, supra*.

¹¹² G.R. No. L-10470, June 26, 1958.

¹¹³ G.R. No. L-10198, Jan. 22, 1958.

¹¹⁴ Section 17(m) of the City Charter of Cebu.

¹¹⁵ G.R. No. L-10780, May 26, 1958.

general admission ticket and every balcony ticket respectively. The Court held this additional tax to be an assessment against the theater business itself and there being no express provision of law granting the City the power to impose such a tax, it was illegal and void as being beyond the power of the City to impose. The Court however, refused recovery in favor of the theater owner because the right to such recovery belongs not to him but to the public patronizing the theaters.¹²⁶

¹²⁶ Cited *Medina v. Bagulo*, 48 OG (8) 4769.

