RELIEF FROM MUNICIPAL TAXATION IN THE PHILIPPINES

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I. INTRODUCTION:

Before the turn of the present century, it was idle to speak of remedies afforded the municipal taxpayer. The *pueblo*, which could hardly be considered a municipal corporation in the sense that we now take the term to mean, seem to have had no powers of taxation as a corporate person. Municipal revenues were confined to a share in national taxes and fees collected within the *pueblo* or district.[2] Frequently, however, these revenues, which were known as the *fundos locales*, were remitted to the national treasury and from there sent to Spain.[3] Consequently the local governments had little or nothing to spend. But since money had to be raised somehow to finance local affairs and concerns,[4] resort was often had to extra-legal, if not illegal, methods.[5]

Although municipal financing was done through illegal methods,[6] the citizens had no recourse but to tolerate the abuses thus committed by their town officials. Even if someone were foolhardy enough to complain, which was very doubtful, opportunity for re-

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[1] This term, for purposes of this paper, includes every exercise of municipal authority to secure municipal revenue, whether the amount levied is designated as taxes, license taxes or license fees.

And for th reason that provinces have little or as power of taxation under present statutes (or even past statutes, for that matter), the term "municipal corporations" as used in this paper should be understood to refer only to municipalities, municipal districts, chartered cities and under R.A. No. 2379 barrios. which have been made "quasi municipal corporations", vested with highly limited taxing powers.

[2] The taxes and tributes due from the citizens were imposed by the central government, and the *pueblos*, no less than the *barangays*, were only a little more than mere administrative districts for the collection of these taxes and dues. (O.D.Corpuz, THE BUREAUCRACY IN THE PHILIPPINES (Manila, University of the Philippines, 1957), pp. 41, 108, 111, 114).

[3] Of course, part of the taxes and dues thus imposed were meant to pertain to the *pueblos*, such as certain excise taxes (Corpuz, *op. cit.*, p. 111), but in actual practice, the *fundos locales* were siphoned into the national treasury. (*Ibid.*, p. 114).

[4] Among important municipal expenditures may be mentioned those which pertained to municipal salaries, essential equipment and supplies, upkeep of the *cuadrilleros*, support of the municipal prisoners, and repair of municipal property, such as roads and bridges (*Ibid.*, 112-113).

[5] "According to Azcarraga y Palmero, the manner by which the municipal bureaucrats raised the funds to meet municipal expenses were not 'mysteries' to those who, like him, had been provincial governors who were disposed to make frequent visits to the *pueblos*. He describes these methods as 'not always just and always illegal, for the laws and regulations did not authorize them'. The most common method was to collect fees from a number of townsmen —thus exempting them from the *polos y servicios*—and applying the money thus obtained to municipal salaries. Sometimes, instead of getting paid in money, a municipal bureaucrat was assigned two *polistas* weekly, whose services he employed is his private needs. Another method was to charge travellers, whom the local officials were obliged to supply with provisions, double the prescribed prices for food and other necessities. Another method, which was based on the obligation of the townspeople to supply food and provisions at a modest cost to the parish priest, Spanish officials and Spanish residents (if any). was practised as follows:

Instead of a dozen hens, thirteen or fourteen are taken; and instead of two dozen, twenty-eight or thirty eggs are exacted; and the excess is applied to the maintenance of the *cuadrilleros*, and also for the *gobernadorcillo*, or the *tenientes*. This surplus is not paid for, and the townspeople keep quiet by custom.' (Corpuz, *op. cit.*, p. 114).

[6] Even where taxes were legitimately imposed for the use of the *pueblos*, such as certain excise taxes, it was the unjust practice to "farm" them out for collection to certain lessees, who were presumably the wealthier members of the *principalia* (*Ibid.*, p. 111).

Such practice is now forbidden (par. 4, Sec. 2287 of the Revised Administrative Code) has been forbidden since the turn of the century (Secs. 48, 69, Municipal Code, Act No. 82, January 31, 1901).

dress was preciously little, if any.[7] For the *gobernadorcillo* who was largely responsible for the abuses was himself the judge who was supposed to provide the correction and the remedy.[8] Naturally, proper justice could not be done to the complaints of the citizens. Neither did it help him much to bring his grievances to the *alcalde* of the province, since this officer frequently had a share in the amounts which had been extorted.[9] Judicial relief then was a virtual impossibility for the taxpayer during the Spanish regime.

For this reason, the following discussion has to be confined to municipal corporation as established by the Americans and as recognized by existing legislation.

From the time they were introduced by the United States to this country at the beginning of the century,[10] municipal corporations, such as the towns and cities, have shown themselves to be necessary, if inexpedient, institutions in our society; and doubtless, the average citizen has learned to put up with their interference in his private affairs and concerns. He has even come to accept their exactions in the form of taxes and license fees as perhaps in the natural order of things, as inconveniences which cannot be helped and therefore to be tolerated philosophically, like the coming of the rain or the incidence of disease.

But this acceptance of common burdens for the common good does not mean that the municipal taxpayer is willing to be imposed upon, that he is resigned to these abuses which municipal corporations, like any other institution in human society, are liable to commit from time to time. Knowing that in this country we live in a regime of law and that there are definite rules which determine how he is to be fleeced in common with the other citizens, he is rather quick to resist when he finds out that his town or city has ventured to exact from him a tax or license fee contrary to those rules. At such times, he makes haste to our courts, which listen to his complaints and which, is their rule as guardians against tyranny, grant him the relief proper under the circumstances.

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[7] As was observed by a one-time provincial governor: "And it is necessary to note that these abuses, however prejudicial to the *pueblo*, are never or only with difficulty proved by the authorities; because the *principales*, inasmuch as it is they who alternate in the municipal posts, are interested in seeing that these tricks are not discovered; for otherwise the municipal offices cannot run when their turn comes to serve in office. The townspeople, a timid and submissive sort, always follow the maxim of not displeasing their superiors, for they know that the vengeance..... (of the latter) is terrible." (Azcarraga y Palmero. *La Reforma del Municipio Indigena en Filipinas*, pp. 16-17, quoted in Corpuz, *op. cit.*, p. 114).

[8] Corpuz, *op. cit.*, p. 111.

[9] *Ibid.*, p. 112.

[10] Although municipalities were organized under General Order No. 40 issued by the Military Governor on March 29, 1900, the establishment of municipal corporations may be said to have stemmed from the orders of President McKinley contained in his Instructions to the Second Philippine Commission, April 7, 1900, par. 3. Pursuant to such orders, the Municipal Code was approved January 31, 1901.

II. REMEDIES IN GENERAL:

A. *Legal Basis:*

The right of the citizen to be relieved of wrongful municipal taxes, no less than the power of the courts to afford him appropriate relief, ultimately rests on the principle which for half a century has been provided in our organic acts,[11] that no person shall be deprived of his property, among other things, without due process of law nor shall any person be denied the equal protection of the laws.[12] Our towns and cities have but limited power to tax.[13] Beyond the authority conferred by statute and exercised through a valid ordinance, the taking of property through municipal taxation is unlawful and is not pusuant to due process.[14] Accordingly, our courts are authorized to forbid the collection of such taxes or to order a refusal of those already collected.

It would seem that no statute is needed to confer judicial authority in this respect. Invalidation of taxing ordinances is a power entailed in judicial review and a refund is reasonable relief incidental to a finding by the courts that the taking of property through taxation was not according to due process. It is only on this reasoning, if ever, made explicit in the decisions, can we justify what our courts have done and continue to do in fact. No statute expressly and specifically authorizes the refund of municipal taxes wrongfully or unlawfully collected; yet no one questions the right of an aggrieved taxpayer to such refund nor the authority of the court to grant it when it does.

Nevertheless, judicial authority in this respect is given contour by statute. Since it is to be exercised through specific modes of relief called suits or actions, it is necessarily delimited or regulated by statutory provisions, for the power of the legislature to regulate remedies is well-nigh complete.[15] Our courts have ample jurisdiction to grant relief in connection with their exercise of judicial power, but to have such jurisdiction exercised in behalf of an aggrieved taxpayer, the requisites laid down by statute have to be satisfied.[16]

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[11] Sec. 5, Act of Congress of July 1, 1902, par. 1, Sec. 3, Act of Congress of August 29, 1916 (Jones Law)

[12] This great ordinance of justice is now found in the Bill of Rights of our Constitution, Article III, Sec. 1, clause (1). Also worthy of mention is the constitutional requirement that the rule of taxation shall be uniform (Article VI, Sec. 14, clause 1).

[13] The taxing power of the various cities is conferred chiefly by their respective charters, that of the towns and municipal districts by the Revised Administrative Code and R.A. No. 2264, which also applies to the cities, and that of the barrios by R.A. No. 2379, particularly Sec. 14 thereof.

[14] A typical statement of our Supreme Court suggestive of this reasoning is that made in connection with its reversal of a decision of the Court of First Instance of Iloilo holding defendant liable for the municipal tax on tenement houses: "And it not appearing that the power cannot be assumed and hence the ordinance in question is ultra vires in so far as it taxes a tenement house such as those belonging to defendants" (City of Iloilo v. Villanueva G.R. No. L-12695, March 23, 1959.)

[15] See the last sentences of Sec. 13, Art. VIII of the Constitution.

[16] Visayan Electric Co., S. A. v. City of Dumaguete *et al.*, G.R. No. L-10787, Dec. 17, 1957; Fernandez v. Shearer, 19 Phil. 78.

Thus, while our laws pertaining to municipal taxation do not confer judicial power to give relief, they do recognize as well as regulate it.

There is in this respect no one set of legal rules. Heterogeneity and not hemogeneity governs judicial relief from municipal taxation. The laws which afford remedies to the municipal taxpayer in the municipalities and municipal districts on the one hand, are different from those which afford remedies in the various cities. While both groups are but distinct species of municipal corporations and are subject in their acts to constitutional restrictions on their powers, the relief available to the taxpayer in the cities are chiefly regulated by their charters [17] while the relief available in the municipalities and municipal districts are governed largely by more general laws, such as the Revised Administrative Code, although there is no difference as to the specific actions.[18]

From the beginning of the American regime, such statutory regulations has been confined largely to suits assailing the invalidity of a tax or taxing ordinance. Under our first Municipal Code,[19] the power of our courts to invalidate a tax by reason of its illegality or some other ground was recognized but made subject to certain requirements.[20] This same power is recognized in the various statutes affecting municipal taxation, such as the various charters with respect to the cities and the Revised Administrative Code with respect to the towns, municipal districts and the barrios.[21] It is to be

[17] These city charters. with the corresponding sections prescribing conditions for judicial remedies, are as follows:

Sec. 2574, Chap. 61, Revised Administrative Code (Baguio City); Sec. 57, R.A. No. 179 (Ormoc City); Sec. 58, R.A. No. 183 (Pasay City); Sec. 57, C.A. No. 520 (San Pablo City); Sec. 35, C.A. No. 338 (Tagaytay City); Sec. 57, R.A. No. 327 (Dumaguete City); Sec. 58, R.A. No. 328 (Calbayog City); Sec. 57, R.A. No. 170 (Dagupan City); Sec. 57, R.A. No. 162 (Lipa City); Sec. 57. R.A. No. 305 (Naga City); Sec. 35, C.A. No. 326 (Bacolod City); Sec. 58, R.A. No. 523 (Butuan City); Sec. 57, R.A. No. 526 (Cabanatuan City); Sec. 58, R.A. No. 515 (Iligan City); Sec. 58, R.A. No. 521 (Cagayan de Oro City); Sec. 57, R.A. No. 321 (Ozamis City); Sec. 32, G.A. No. 51 (Davao City); Sec. 58, R.A. No. 760 (Tacloban City); Sec. 57, R.A. No. 603 (Roxas City); Sec. 32, C.A. No. 39 (Zamboanga City).

Sec. 77, R.A. No. 409 (Manila); Sec. 63, R.A. No. 537 (Quezon City); Sec. 73, C.A. No. 58 (Cebu City); Sec. 29. R.A. No. 987 (Cavite City); and Sec. 24, R.A. No. 288 (Basilan City) incorporate the remedies in the Assessment Law Iloilo City is lone exception (C A. Nos. 57 and 158)

[18] Sec. 2236 of the Revised Administrative Code reads:

"Sec. 2236. *Judicial authority to determine the validity of municipal proceedings.*—Nothing contained in either of the last three preceding sections hereof shall be construed to deprive any judicial tribunal of power to hold void for want of statutory authority any act, ordinance, or resolution of a municipal council or executive order of a municipal president the validity of which shall be involved in any cause arising before such tribunal, without respect to the decision of the executive authorities."

[19] Act No. 82 (January 31, 1901).

[20] States Sec. 84 of the Municipal Code:

"Sec. 84. No court shall entertain any suit assailing the validity of a tax assessed under this Act until the taxpayer shall have paid, under protest, the taxes assessed against him, nor shall any court declare any tax invalid by reason of irregularities or informalities in the proceedings of the officers charged with the assessment or collection of the taxes, or of a failure to perform their duties within the time hereinafter specified for their preformance, unless such irregularities, informatlities or failure shall have impaired the substantial rights of the taxpayer; nor shall any court declare any tax assessed under the provisions of this Act invalid except upon the condition that the taxpayer shall pay the just amount of his tax, as determined by the court in the pending proceeding."

[21] See notes 17 and 18.

Sec. 29. R.A. No. 987 (Cavite City) and Sec. 24, R.A. No. 288 (Basilan City) incorporatt the remedies in the Assessment Law in their respective Charters. Iloilo seems to be the lone exception (C.A. Nos. 57 & 158)

noted that the original Administrative Code superseded the Municipal Code and was in turn replaced by the aforesaid Revised Administrative Code.

That the power of the courts thus recognized was to be exerted in connection with the relief of municipal taxpayers from unlawful or unwarranted exactions is quite clear. Under the Municipal Code, the requirements for the exercise of such judicial power had obvious reference to a suit affecting an aggrieved taxpayer. So it is in the corresponding provisions of the present-day city charters. And under both Administrative Codes, the original as well as the Revised, the power of annulment is not to be exercised is *vacuo*; it is required that, when wielded, the validity of the municipal act is involved in some cause arising before such courts.

The inference which may be reasonably drawn from these statutory provisions is that the citizen, whenever he feels himself prejudiced unduly, may seek relief from municipal taxation, and for this purpose invoke the jurisdiction of our courts by complying with the conditions required for its exercise; and that such courts may, in connection with the pending cause, annul the taxing ordinance complained of, if such be necessary to finally determining the case and to affording the relief proper under the circumstances.

Thus far, it is clear that relief from municipal taxation is a judicial affair. However, it happens from time to time that the citizen is relieved of municipal taxes or license fees by a legislative act. The return of the amounts improperly exacted from the citizens as taxes or license fees by a municipal corporation may be undertaken by itself [22] or by the national legislature,[23] without the intervention of the courts.

In such cases, the remedy afforded the citizen is more direct and more speedy, since immediate payment of the claims for refund may be made from funds which have been appropriated for that purpose. Nevertheless, disputes arise with respect to the enforce-

[22] Pursuant to an opinion rendered by the Secretary of Justice on 11 January 1951, Op. No. 6, series of 1951, holding that Ordinance No. 2991 is null and void, the Municipal Board of Manila appropriated the sum of P297,349.65 "for the refund of meat inspection fees illegally collected" under Ordinance No. 2991 and authorized the refund in full of all meat inspection fees paid under it by inserting a provision to that effect in Ordinance No. 3538, enacted on 28 October and approved 31 October 1952. (Wise & Co. Inc. v. City of Manila & Sarmiento, G.R. No. L-9156, April 28, 1957.)

[23] Act No. 975 of the Philippine Commission was entitled:

"An act providing for the relief of persons who have paid taxes upon *land*, in the city of Manila, for the years nineteen hundred and one and nineteen hundred and two upon an excessive assessment."

As its title indicates, the aforesaid act provided for the relief of all persons who paid taxes upon land in the city of Manila for the years 1901 and 1902 upon an essessed valuation more than 50 per cent above the revised assessed valuation provided for in Act No. 581, notwithstanding their failure to protest and appeal within the time prescribed by law in such cases. (Zamora v. The City of Manila, 7 Phil. 584.)

See also Secs. 6 & 7, Act of Congress of March 8, 1902; Sec. 1, Act No. 132, May 22, 1901.

ment of the statute [24] or ordinance [25] authorizing refund, and in the end judicial intervention takes place just the same.

B. *Available actions:*

Judicial relief from municipal taxation generally takes two forms in the Philippines, namely: (1) absolution of the complaining municipal taxpayer from the payment of the taxes or license fees in question, through an action for declaratory relief or annulment of the ordinance imposing the same;[26] and (2) the return of the amounts paid by the complaining taxpayer as taxes or license fees, through an ordinary suit for refund.[72]

However, no hard and fast distinctions obtain in respect to these remedies. Annulment of the taxing ordinance may be the precise antecedent relief prayed for in an action for refund and in at least one case the complaint was one for annulment as well as refund.[28] And it often happens that the real object of an action for declaratory relief is either the annulment of the ordinance in question or a specific assessment thereunder. Nevertheless, these remedies have their own distinguishing characteristics, generally speaking, which virtually dictate to the aggrieved taxpayer the remedy available to him under the facts of his case.

As a remedy ancillary to the main action for declaratory relief or annulment of ordinance, our courts have sometimes made available the writ of preliminary injunction to the taxpayer resisting collection of an illegal tax or license fee.[29] Rarer still, they have al-

[24] Zamora v. City of Manila, 7 Phil. 584, when the term "land" was interpreted to include lands with the buildings and improvements thereon.

[25] Wise & Co. Inc. v. City of Manila & Sarmiento. G.R. No. L-9156, April 27, 1957; Atkins Kroll & Co. v. City of Manila, *et al.*, G.R. No. L-11381, April 28, 1958; Subido *et al.* v. Lacson *et al.* G.R. No. L-9957, April 25, 1958.

All these cases involved refund of meat inspection fees under authority of Ordinance No. 3538 of the City of Manila. See fn. 23.

[26] Taxpayers resisting collection of municipal taxes usually resort to the action for declaratory relief. See, as examples, Physical Therapy Organization of the Philippines, Inc. v. Municipal Board of the City of Manila, G.R. No. L-10448, Aug. 30. 1957; Manila Tobacco Association v. City of Manila, G.R. No. L-9549, Dec. 21, 1957; Manila Lighter Transportation Inc. v. Municipal Board of Cavite City, et al. G.R. No. L-6848, April 27, 1956; Vega v. Municipal Board of the City of Iloilo, 50 O.G. No. 6, 2456; Association of Customs Brokers et al. v. Municipal Board of the City of Manila, et al.. 49 O.G. No. 5, 1803; Sy Kong v. Sarmiento, G.R. No. L-2934, Nov. 29, 1951

But occasionally the remedy resorted to is an action to annul the ordinance imposing the taxes or license fees in question. See, as an example, Punsalan et al. v. Municipal Board of the City of Manila, 50 O.G. 2485 and Sy Juco Inc. v. Mun. of Parañaque and Rodriguez, G.R. No. L-11265, Nov. 27, 1959. As to which action is proper under specific circumstances, see later part of this paper under the heading *Specific Remedies.*

[27] Most of the cases that come to the Supreme Court for decision are cases for refund of municipal taxes claimed to have been wrongfully collected. The following are examples of cases where recovery was allowed: Nieto v. Laggui, 69 Phil. 96; Smith Bell Co. Inc. v. Municipality of Zamboanga. 55 Phil. 466; Yeo Loby, et al. v. Municipality of Zamboanga, 55 Phil. 656; Pacific Commercial Company v. Romualdez, et al. 49 Phil. 917; Hercules Lumber Co. v. Municipality of Zamboanga, 55 Phil. 653; Li S ng Giap et al. v. Municipality of Daet et al., 54 Phil. 625; Batangas Transportation Co. v. Prov. Treasurer of Batangas et al. 52 Phil. 190; and Manila Electric Co. v. Posadas, 65 Phil. 454.

For a fuller discussion of this remedy, see later part of this paper, under the heading *Specific Remedies.*

[28] Sy Juco, Inc. v. Municipality of Parañaque and Rodriguez, G.R. No. L-11265, Nov. 27, 1959.

[29] A preliminary injunction is one granted at any stage of the action prior to the final judgment (Sec. 1(a), Rule 60, Rules of Court), for any of the causes mentioned in Sec. 3 of Rule 60, Rules of Court.

The following are examples of those cases where a writ of preliminary injunction was

lowed a writ of mandamus to issue for the purpose of compelling refund of wrongful exactions by a municipal corporation, when such refund is already authorized by ordinance.[30]

C. *Grounds for relief:*

These remedies may be predicated on a claim of the taxpayer that the ordinance in question is unconstitutional,[31] or illegal,[32] or unenforceable,[33] or merely inapplicable to the complaining taxpayer.[34]

The claim of unconstitutionality may be supported by an allegation that the municipal tax or license fee in question infringes upon the fundamental freedoms,[35] such as the freedom of religion[36] or

allowed: Pacific Commercial Co. v. Romualdez. et al. 49 Phil. 917; Batangas Transportation Co. v. Prov. Treasurer of Batangas et al. 52 Phil. 190; Recreation & Amusement Association of the Philippines v. City of Manila, et al., G.R. No. L-7922, Feb. 22, 1957; Physical Therapy Organization of the Philippines, Inc. v. Municipal Board of the City of Manila, G.R. No. L-10448, Aug. 30, 1957; Yap Tak Wing v. Municipal Board of the City of Manila, 68 Phil. 511; Municipality of Victorias v. Victorias Milling Co., 67 Phil. 733.

But the granting of such writ is exceptional, the general rule being that the taxpayer cannot interfere with the collection of municipal revenues by injunction. (Zaragosa v. Alfonso. 46 Phil. 159.)

[30] Subido et al. v. Lacson et al., G.R. No. L-9957, April 25, 1958.

[31] American Bible Society v. City of Manila, G.R. No. L-9637, April 30, 1957, where it was held that Ordinance No. 3000 of the City of Manila sought to be applied to the sales by taxpayer corporation of Bibles and other religious literature was constitutionally inapplicable to such sales, since it would result in an impairment of the right to free exercise and enjoyment of religious profession and worship, as well as dissemination of religious beliefs. (Art. III, Sec. 1, clause [7] of the Constitution of the Philippines.)

[32] People v. Carreon. 65 Phil. 588; Yeo Loby et al. v. Municipality of Zamboanga, 55 Phil. 656; Pacific Commercial Co. v. Romualdez, et al., 49 Phil. 917; Smith Bell & Co. v. Municipality of Zamboanga, 55 Phil. 466; Hercules Lumber Co. v. Municipality of Zamboanga, 55 Phil. 653; Li Seng Giap v. Municipality of Daet et al., 54 Phil. 625; Cu Unjieng v. Patstone, 42 Phil. 818; Hawaiian Philippine Co. v. Municipality of Silay et al., 62 Phil. 961; Santos Lumber Co. et al. v. City of Cebu et al., G.R. No. L-10197, January 22, 1958; Rojas & Bros. v. City of Cavite et al., G. R.No. L-10730, May 26, 1958; Vega & Gellada v. Municipal Board of the City of Iloilo, 50 O. G., No. 6, 2456; Association of Customs Brokers and Manlapit v. Municipal Board of the City of Manila et al., 49 O. G. 1803; Philippine Transit Association v. Treasurer of the City of Manila et al., G. R. No. L-1274, May 27, 1949; Philippine Motor Association et al. v. The City Assessor of Manila et al., G. R. No. L-4442, May 22, 1953; Medina et al. v. City of Baguio, 48 O. G. 11, 4769; Icarb v. Municipal Council of Baguio et al., 46 O. G., Supplement No. 11, 320.

[33] Municipal Government of Pagsanjan v. Reyes, G.R. No. L-8195, where it was held that although the ordinance in question became valid upon the approval by the Secretary of Finance on February 22, 1949, pursuant to C.A. No. 472, such ordinance was enforceable only on January 1, 1950 in accordance with Sec. 2309 of the Revised Administrative Code. Consequently, collection of the increased rates of license taxes provided for in said ordinance begin only as of the latter date. Also, Syjuco, Inc. v. Mun. of Parañaque and Rodriguez, G.R. No. L-11265, Nov. 27, 1959.

[34] This defense is usually raised on the theory that the license taxes in question can apply only to business or activity engaged in for profit and that activity of complaining taxpayer is not a business or an activity carried on for profit. Municipality of Victorias v. Victorias Milling Co., 67 Phil. 733; Nieto v. Laggui, 69 Phil. 96; Batangas Transportation Co. v. Prov. Treasurer of Batangas et al., 52 Phil. 190; Hawaiian Philippine Co. v. Municipality of Silay, et al., 62 Phil. 965; People v. Greenfield, 63 Phil. 367; Manila Lighter Transportation Co. Inc. v. Municipal Board of the City of Cavite, et al., G. R. L-6848, April 27, 1956; American Bible Society v. City of Manila, G. R. No. L-9637.

This defense rests sometimes on the proposition that "where a person or corporation is engaged in a distinct business and, as a feature thereof, in an activity merely incidental which serves no other person or business, the incidental and restricted activity is not to be considered as intended to be separately or additionally taxed." (Craig v. Ballard & Ballard Co., 196 So. 238). Smith, Bell & Co. v. Municipality of Zamboanga, 55 Phil. 366; Standard Vacuum Co. v. Antigua and the Municipality of Opon, G. R. No. L-6931, April 30, 1955; Palanca v. City of Manila and Trinidad, 41 Phil. 125; and Central Azucarera Don Pedro v. City of Manila & Sarmiento, G. R. No. L-7679, Sept. 29, 1955.

[35] American Bible Society v. City of Manila, G. R. No. L-9637, April 30, 1957.

[36] The sale of bibles and religious pamphlets, though sometimes made at a price higher than actual cost of the same, does not constitute selling said "merchandise" for profit. Consequently, Ordinance No. 2529 of the City of Manila requiring a license from retailers who sell within city limits books exclusively, pursuant to Sec. 2444 (m-2) of the Revised Administrative Code (and which are still subject to such license under R. A. No. 409, Manila's Revised Charter), cannot be applied to plaintiff taxpayer, for to do so would impair the free exercise and enjoyment of its religious profession and worship, as well as the right to disseminate religious beliefs. (American Bible Society, *supra.*)

that it denies due process or equal protection of the laws [37] or that the ordinances by which the same has been levied violates the rule of uniformity.[38]

The contention of illegality may be based on the ground that the subject matter taxed is beyond the taxing power of the municipal corporation,[39] or that such kind of tax as has been imposed is specifically forbidden,[40] or that the ordinance by which the levy is made has not been approved by certain administrative authorities as required by law.[41]

Collection of municipal taxes or license fees have also been successfully resisted on the ground that *res judicata* bars the liability of the taxpayer,[42] or that the admission of fact relied on by the lower court was due to an honest mistake of the taxpayer,[43] or that

[37] Article III, Sec. 1, clause (1) of the Constitution of the Philippines. Among the cases where this defense was raised may be mentioned: Yap Tak Wing & Co., Inc. v. Municipal Board of the City of Manila et al., 68 Phil. 511; Manila Horse Trainers Association of the Philippines & Sordan v. de la Fuente, G. R. No. L-2947, January 11, 1951; U. S. v. Sumulong, 30 Phil. 381; City of Manila v. Lyric Music House, Inc., 62 Phil. 125; Philippine Motor Association et al. v. City Assessor of the City of Manila et al., G. R. No. L-4442, May 22, 1953.

The objection sometimes takes the form of a plea against double taxation, on the theory that the imposition of a tax by a municipal corporation upon subject matter already taxed by the National Government constitutes such practice, as constitutionally inhibited. But our Supreme Court has never hearkened to it. Punsalan et al. v. Municipal Board of the City of Manila, 50 O. G., No. 6, 2435; Manila Motor Co. v. City of Manila, 72 Phil. 336; Syjuco, Inc. v. Mun. of Parañaque and Rodriguez, G. R. No. L-11265, Nov. 27, 1959.

[38] Our Constitution likewise ordains: "The rule of taxation shall be uniform." (Article VI, Sec. 14, clause [1])

In the following cases, our Supreme Court held that the rule of uniformity was violated by the ordinance complained of: Philippine Motor Association et al. v. City Assessor of Manila et al., G. R. No. L-4442, May 22, 1953; Yeo Loby v. Municipality of Zamboanga, 55 Phil. 656; Association of Customs Brokers & Manlapit v. Mun. Board of the City of Manila, et al., 49 O. G. 1803.

[39] Vega & Gellada v. Municipal Board of the City of Iloilo, et al., 50 O. G. No. 6, 2456; Rojas & Bros. v. City of Cavite, G. R. No. L-10730, May 26, 1958; Manila Lighter Transportation Co., Inc. v. Municipal Board of the City of Cavite, et al., G. R. No. L-6848, April 27, 1956; Santos Lumber Co. et al. v. City of Cebu, et al., G. R. No. L-10197, January 22, 1958; City of Manila v. Tanquintic, 58 Phil. 297; Hawaiian Philippine Co. v. Municipality of Silay, 62 Phil. 965; Batangas Transportation Co. v. Prov. Treasurer of Batangas, 52 Phil. 190; Hercules Lumber v. Municipality of Zamboanga? 55 Phil. 653; Pacific Commercial Co. v. Romualdez et al., 49 Phil. 917; Smith Bell & Co. v. Municipality of Zamboanga, 55 Phil. 466; Yeo Loby et al. v. Municipality of Zamboanga, 55 Phil. 656; Nieto v. Laggui, 69 Phil. 96; Municipality of Victorias v. Victorias Milling Co., Inc., 67 Phil. 733; People v. Carreon. 65 Phil. 588; Icard v. City of Baguio et al., 46 O. G. Supp. No. 11, 320; City of Iloilo v. Villanueva, G. R. No. 12695, March 23, 1959; Syjuco, Inc. v. Mun. of Parañaque and Rodriguez, G. R. L-11265, Nov. 27, 1959.

[40] This defense was unsuccessfully raised in the following cases: Shell Co. of the Philippines, Ltd. v. Vaño, 50 O. G., 1046, where it was held that the tax assailed was neither a percentage tax nor a specific tax on specified articles prohibited under C. A. No. 472; and Uy Matiao & Co. v. City of Cebu et al., 49 O. G., No. 5, 1797, where it was held that a municipal license tax on the business of selling and storing copra, imposed on the basis of weight, is not a specific tax and therefore not ultra vires. See also Syjuco, Inc. v. Mun. of Parañaque and Rodriguez, G. R. No. L-11265, Nov. 27, 1959. The Supreme Court upheld this defense in Medina et al. v. City of Baguio, 48 O. G. 4769 and in Saldaña v. City of Iloilo, G. R. No. L-10470, June 26, 1958.

[41] Li Seng Giap et al. v. Municipality of Daet, et al., 54 Phil. 626, where it was held that since municipal ordinance No. 14 of Daet imposed a license tax exceeding ₱25, and was not approved, as required by section 2 of Act No. 3422, by the Secretary of Interior (later Secretary of finance) before being enforced, the same was null and void, and the taxes thereunder were unlawfully collected. See also Smith Bell Co. v. Municipality of Zamboanga, 55 Phil. 466, and Syjuco, Inc. v. Mun. of Parañaque and Rodriguez, G. R. No. L-11265, Nov. 27, 1959.

[42] Where a municipal corporation fails to appeal from a decision of the proper court acquitting the taxpayer of liability for municipal taxes on the ground that the ordinance imposing such tax liability was null or otherwise inapplicable to that particular taxpayer, such failure gives the decision, although erroneous, the force of law; and by the doctrine of *res judicata*, such taxpayer cannot be made to pay the tax in question, or else, if he has paid such tax, refund thereof is proper. Visayan Electric Co. S. A. v. City of Dumaguete, et al., G. R. No. L-10787, December 17, 1957.

[43] Although the taxpayer or his counsel may not be free from negligence or blame in entering into the stipulation of facts without duly ascertaining the true meaning of the terms employed therein, said taxpayer is entitled o an opportunity to show his mistake and the non-applicability as to him of the tax imposed by the ordinance in question. City of Iloilo v. Pinzon, G. R. No. L-7552, May 31, 1955.

the tax sought to be collected had already been paid in whole or in part.[44]

On the whole, however, judicial attack on a taxing or licensing ordinance is premised on the view that the same is *ultra vires*, that is, illegal because beyond the municipal power to tax.

D. *Forum:*

Whichever remedy is sought, the action must be brought in the proper court. A complaint for declaratory relief or for annulment of a taxing or licensing ordinance had to be filed in the Court of First Instance within the jurisdiction of which the municipal corporation promulgating or otherwise issuing the taxing or licensing ordinance complained of is located.[45] An action for the recovery of amounts wrongfully exacted as taxes or license fees may be brought in the Court of First Instance [46] or in the Municipal or Justice of the Peace Court [47] where the municipal corporation making the unlawful levy is to be found, the particular forum being dependent on the amount sought to be recovered in the complaint.

But where the remedy sought—and properly—is the extraordinary writ of mandamus to compel the defendant municipal corporation to refund the amounts claimed to have been wrongfully collected, the proper forum must be a court of record regardless of the amount involved.[48]

E. *Pleadings and procedure:*

The pleadings and procedure involved in these actions follow the requirements found in the general rules.[49] It has been held,

[44] Malversation by the receiving official of the amount paid as tax does not render the taxpayer who paid it liable again for the tax. To hold the taxpayer responsible for the misappropriation of the money collected for taxes due, by the public official who has properly collected and received payment thereof, would not only be unreasonable but also highly unjust. People v. Policher, 60 Phil. 770.

Where under a mistake of law, taxpayer paid only P500 to the City of Manila as licese fees, when said taxpayer is liable for not less than P1000 as such license fees, judgment may be entered against him for not more than P500, the other P500 having been previously paid. City of Manila v. Pacific Commercial Co., 60 Phil. 813.

[45] "Civil actions in Courts of First Instance may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff." (Sec. 1, Rule 5, Rules of Court).

The proper forum for either of these actions is the Court of First Instance, since both are civil actions "in which the subject of the litigation is not capable of pecuniary estimation." (Sec. 44(a), Judiciary Act of 1948).

[46] If the amount sought to be recovered, exclusive of interest, amounts to more than five thousand pesos, the action for refund should be brought to the Court of First Instance having territorial jurisdiction. (Sec. 44, (c), Judiciary Act of 1948, as amended).

[47] If the amount of the demand does not exceed five thousand pesos, exclusive of interest and costs, the proper forum for refund is the Justice of Peace or Municipal Court having territorial jurisdiction. (Sec. 88, Judiciary Act of 1948, as amended).

[48] The reference here is to the proper Court of First Instance (Sec. 44 [h], Judiciary Act of 1948) and to the Supreme Court (Sec. 17, clause 1, Judiciary Act of 1948).

The power of the Court of Appeals to issue a writ of mandamus extends only to cases where such writ is in aid of its appellate jurisdiction. (Sec. 30, Judiciary Act of 1948).

[49] The appropriate rules in the Rules of Court should govern.

See Wise & Co. v. City of Manila, G. R. No. L-9156, April 29, 1957, where it was held that the taxpayer's complaint states a sufficient cause of action.

See also Recreation & Amusement Association of the Philippines v. City of Manila et al., G. R. No. L-7922, February 22, 1957, where the defense of the municipal corporation that the complaint of taxpayer failed to state a cause of action was in effect upheld by a finding of both

in an action for declaratory relief, that to be available as a basis of annulling an ordinance on appeal, the ground of objection must first be raised in the court below; if alleged for the first time on appeal, such ground will be ignored.[50] Nor can every available ground be considered by the court, even if alleged. The taxpayer cannot question those portions of an ordinance which does not prejudice him in a material way, for it is a well settled rule that a person who is not adversely affected by a taxing ordinance may not attack its validity. Stated differently, he may not complain that a licensing ordinance is invalid as against a class other than that to which he belongs. Accordingly, he may contest the validity of the provisions that injure his interest but not those which do not.[51]

The rule on judicial notice applies to taxing or licensing ordinances. It has been held in a prosecution for the violation of a municipal ordinance regulating fishing privilege in municipal waters that no special proof need have been presented as to the existence and contents of such ordinance. There is no provision of law that prohibits the Courts of First Instance from taking judicial notice of the ordinances enacted in the municipalities of their districts, or that provides that they cannot exercise such authority whenever it may be necessary to decide the questions submitted to them.[52]

F. *Parties:*

Who are the proper parties to these actions? Naturally, the complaint must be directed generally against the corporation itself by taxpayers whose interests are directly affected by the taxing or licensing ordinance.

As a general rule, according to our Supreme Court, an action for refund of wrongfully collected taxes must be brought against the municipal corporation itself,[53] not against its officers.[54] Accordingly, the action is improperly brought if the complaint names as defendant

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the lower court and the Supreme Court that the ordinance under question was valid and constitutional.

[50] Manila Race Horse Trainers Association & Sordan v. de la Fuente, G. R. No. L-2947, January 11, 1951

See also City of Manila v. Tanquintic, 58 Phil. 297, where the Supreme Court stated that since the defense of inapplicability of the ordinance in question to passenger motor vehicles was not raised below, no discussion on that point could be made. To the same end, the concurring opinion in Arquiza Luta v. Municipality of Zamboanga, 50 Phil. 748.

[51] Manila Race Horse Trainers Association & Sordan v. de la Fuente, *supra*, citing 62 C. J. S. 830.

See also U. S. v. Sumulong, 30 Phil. 381, where it was held that a taxpayer will not be permitted to assail an ordinance on the ground that it is unduly prejudicial to another or others.

[52] U. S. v. Hernandez, et al., 31 Phil. 342.

[53] Santos v. Aquino, 490 G. R. No. 12, 5344; Manila Race Horse Trainers Association & Sordan v. de la Fuente, G. R. No. L-2947, January 11, 1951; Compania General de Tabacos de Filipinas v. City of Manila, 12 Phil. 397; Subido et al. v. Lacson et al., G. R. No. L-9957, April 25, 1958; Johnston v. Regondola, G. R. No. L-9355, November 26, 1957; Recreation and Amusement of the Philippines v. City of Manila, G.R. No. L-7922, February 22, 1957; Rojas Bros v. City of Cavite et al., G.R. No. L-10730, May 26, 1958; Tan v. de la Fuente & Sarmiento, G.R. No. L-3925, December 14, 1951; Medina et al. v. City of Baguio, 48 O.G. No. 11. 4769 Arong v. Raffinan, G.R. Nos. L-8673-74, February 18, 1956; Shell Co. of the Philippines v. Vaño, 50 O.G. 1046.

[54] Tan v. de la Fuente & Sarmiento, G.R. No. L-3925, December 14, 1951; Subido et al v. Lacson et al. G.R. No. L-9957, April 25, 1958; Shell Co. of the Philippines v. Vaño, 50 O.G. 1046.

only the treasurer of the municipal corporation [55] or both the mayor and the treasurer thereof.[56] Any judgment that could be rendered against these officers, who are not real parties in interest, would be unenforceable against the municipal corporation itself, and the funds of the latter in the possession and control of said officers could not be paid or disbursed by them to satisfy such judgment.[57] It seems sufficient, however, if the municipal Board or Council of the municipal corporation were made defendant, even if the corporation itself is not mentioned by name in the complaint.[58]

This rule does not apply to cases where no cause of action lies against the municipal corporation but only against its officers or agents. Thus, it has been held in a suit for a writ of mandamus directed against the mayor and the treasurer of a municipal corporation, that the preceding was brought against the proper defendants.[59] According to the Supreme Court where the municipal corporation has agreed to the refund of fees collected under an invalid ordinance by approving an appropriation for that purpose, and where the only impediment to the refund is the refusal of the treasurer to approve the vouchers and pay the claims under the excuse that the mayor has ordered the suspension of the payments, the municipal corporation ceases to be the real party in interest and the real parties in interest at such stage are the officers of the municipal corporation who refuse to perform their ministerial duties and pay the claims.[60]

Nor is the failure to include the municipal corporation as defendant necessarily fatal to the action, even under the general rule. It has been held that where the municipal corporation, the real party in interest, has not been made a party to the refund case, the action need not be dismissed with a view to filing another one. The ends of justice would be equally served if the taxpayer were allowed to amend his complaint by including the municipal corporation as a party defendant.[61]

And there have been exceptional cases, where refund of taxes wrongfully collected was ordered by our Supreme Court although the municipal corporation itself was never made party defendant. In one case at least where suit was brought against the municipal

[55] Shell Co. of the Philippines Ltd. v. Vaño. 50 O.G. 1046.
[56] Tan v. de la Fuente & Sarmiento, G.R. No. L-3925, December 14, 1951.
[57] See cases in notes 55 and 56.
[58] Physical Therapy Organization of the Philippines v. Municipal Board of the City of Manila, G.R. No. L-10448, August 30, 1957; Manila Lighter Transportation Inc. v. Municipal Board of the City of Cavite et al., G.R. No. L-6848, April 27, 1956; Vega & Gellada v. Municipal Board of the City of Iloilo, 50 O.G. No. 6, 2456; Association of Customs Brokers et al. v. Municipal Board of the City of Manila, et al., 49 O.G. No. 5, 1803
[59] Subido et al. v. Lacson et al., G.R. No. L-9957, April 25, 1958.
[60] *Ibid.*
[61] Johnston v. Regondola, G.R. No. L-9355, November 26, 1957. where the Supreme Court remanded the case to the court below with instructions to allow amendment to that effect.

treasurer alone, recovery by the taxpayer was allowed,[62] while in another case, where it was brought against both the mayor and treasurer of the municipal corporation only, recovery was not denied on that ground.[63]

In other proceedings, namely the action for annulment and action for declaratory relief, the question as to who is the proper defendant seems to have never been raised,[64] but the general rule also seems to hold in these proceedings since in most cases where the relief sought was afforded the taxpayer, the action was directed at least either against the municipal corporation itself or against the municipal council or city board thereof.[65]

If as a general rule the municipal corporation is the proper defendant, who is the proper person to bring the action? Conformably with the rule that actions must be brought in the name of the real party in interest,[66] it is required that plaintiff must be the taxpayer adversely and directly prejudiced by the taxing or licensing ordinance.[67] This means the person who would be actually liable for the tax or fee, should the validity of the ordinance imposing the same be ultimately upheld. Accordingly, an action for refund should be brought in the name of the owner of the theater, not in the name of its manager;[68] in the name of the proprietors of slot machines, not in the name of the association of such proprietors.[69] It has been held sufficient, though, so as to allow the action to annul an ordinance imposing a license fee on motor-vehicles, if two of several plaintiffs have cars registered in the Motor Vehicle Office attached to the municipal corporation, even if the rest may not have.[70]

It is at least doubtful whether an association of proprietors of businesses which have been taxed, duly chartered as a non-stock corporation, is the real party in interest to contest such tax. Although in at least one case, a suit by a corporation composed of individuals engaged in a certain line of business which was directly affected by

[62] Nieto v. Laggui, 69 Phil. 96.

[63] Arong v. Raffiñan, G.R. No. L-8673-74, February 18, 1956

[64] See Pacific Commercial Co. v. Romualdez & Alfonso, 49 Phil. 917, and Manila Race Horse Trainers Association & Sordan v. de la Fuente, G.R. No. L-2947, January 11, 1951. In the first case, the action contesting the validity of the ordinance was brought only against the mayor and treasurer of the City of Manila; in the second case, against the mayor alone.

[65] See, as examples, Batangas Transportation Co. v. Provincial Treas. of Batangas, et al. 52 Phil. 190; Recreation & Amusement Association of the Philippines v. City of Manila, et al., G.R. No. L-7922, February 22, 1957; Physical Therapy Organization of the Philippines Inc. v. Municipal Board of the City of Manila, G.R. No. L-10448, August 30, 1957; Yap Tak Wing et al. v. Municipal Board of the City of Manila, 68 Phil. 511.

[66] "Every action must be prosecuted in the name of the real party in interest." (Sec. 2, Rule 3, Rules of Court)

But where the proper party plaintiff has died during the pendency of the action, the administrator of his estate may be substituted. De Mesa v. Collector of Internal Revenue et al. 53 Phil. 392.

[67] Manila Race Horse Trainers Association v. de la Fuente, G. R. No. L-2947, January 11, 1951.

[68] Santos v. Aquino et al., 49 O. G. No. 12, 5344.

[69] Recreation & Amusement Association of the Philippines v. City of Manila, G. R. No. L-7922, February 22. 1957.

[70] Philippine Motor Association et al. v. City Assessor of the City of Manila et al., G. R. No. L-4442, May 22, 1953.

the ordinance under question, was allowed,[71] it was probably only because no objection was raised as to that point in behalf of the municipal corporation. The impropriety of such corporation as party is quite clear, since it is the members thereof, as has been pointed out in the preceding paragraphs, who are directly burdened with the municipal tax in question. It is therefore a safe practice when such a corporation sues, to include as party plaintiff an individual member thereof directly prejudiced by the ordinance assailed.[72]

But where a corporation sues as taxpayer, it is required, even assuming that it is the real party in interest, to have in fact the juridical personality it claims. Accordingly, a civil association, claiming to be a corporation but when in fact it is not registered in the Securities and Exchange Commission as such, cannot maintain the action for declaratory relief.[73]

In suits for refund, it seems to be an indispensable requirement that the action be brought by the person or persons who paid the tax sought to be recovered.[74] This issue is decisive in those cases where the tax in question is an indirect tax and is normally shifted, as in the case of the amusement tax imposed on operators of movie show-houses. Our Supreme Court seems to be of the opinion that municipal taxes on the receipts of those operators are shifted ultimately to the movie-goers, whether or not the tax has in fact been billed to the customers.[75] It is presumed that the real party in interest who may sue for the recovery of said tax is not the person who collected the tax, but the public who paid the same.

Accordingly, it has been uniformly held by our Supreme Court that although the tax imposed upon the admission fee to the movie showhouses may have been illegal for want of statutory authority, nevertheless, the proprietors or owners of such amusement places

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[71] Physical Therapy Organization of the Philippines Inc. v. Municipal Board of the City of Manila, G. R. No. L-10448, August 30, 1957.

[72] Philippine Motor Association et al. v. City Assessor of Manila et al., G. R. No. L-4442, May 22, 1957; Manila Race Horse Trainers Association & Sordan v. de la Fuente, G. R. No. L-2947, January 11. 1951; Philippine Transit Association v. Treas. of the City of Manila et al., G. R. No. L-1274, May 27, 1949; Association of Customs Brokers & Manlapit v. Mun. Board of the City of Manila et al., 49 O. G. No. 5, 1803.

[73] Recreation & Amusement Association of the Philippines v. City of Manila, G. R. No. L-7922, February 22, 1957.

[74] Rojas & Bros. v. City of Cavite, G.R. No. L-10730, May 26, 1958; Mendoza et al. v. Mun. of Meycauayan, G.R. Nos. L-6069 and 6070, April 30. 1954; Medina et al. v. City of Baguio, 48 O.G. 4769; Arong v. Raffiñar. G. R. Nos. L-8673-74, Feb. 18, 1956.

[75] While in the cases of Rojas & Bros. v. City of Cavite, G.R. No. L-10730, May 26. 1958, and Mendoza et al. v. Mun. of Meycauayan, G.R. Nos. L-6069 & 6070, April 30, 1954, the Supreme Court took notice of the fact that the amounts sought to be recovered as illegal taxes were in fact billed to the customers, the decisions in Medina et al. v. City of Baguio, 48 O.G. No. 11, 4769, and Arong et al. v. Raffiñan, G.R. Nos. L-8673-74, February 18. 1956, were supported by no such finding. Obviously, the Supreme Court did not consider this point vital. Accordingly. it seems to have disregarded the distinction between the impact of the tax (the burden of which falls upon the person who actually and literally pays the tax to the corporation) and the final incidence thereof, resulting from the shifting of the tax, which falls upon the person who can not longer shift and who therefore ultimately bears the burden of the tax. With the billing of the tax, there might be some justification for saying the impact as well as the final incidence of the tax is on the customer; but without billing, the impact is obviously on the theater proprietor or operator. It is only when the tax is billed that the customer making the purchase is made aware that he is paying the amount imposed as tax on the price paid.

cannot recover the amounts wrongfully collected by the municipal corporation.[76] Only the customers, who paid the tax, are entitled to sue and recover the amounts correspondingly to them. It is hinted, however, that the operator-taxpayer who paid the tax may established that he bore the brunt of the tax and did not shift the same, in which event he has personality to claim refund, being the party directly affected by the tax.[77]

G. *Extent of the relief:*

The nature and extent of the relief naturally depend upon the action brought, upon the allegations presented in the complaint and upon the proof advanced in support thereof.[78] In actions for declaratory relief, the remedy granted takes the form, as we have said, of absolution of the taxpayer from any liability for the taxes or license fees in question due to the nullity or illegality or inapplicability of the ordinance imposing the same. In actions for refund, the taxpayer is allowed to recover whatever amount has been wrongfully collected from him. Such modes of relief are sometimes concurrent, as when the taxpayer is awarded a refund and at the same time absolved from liability for future payment.

The amount refunded may sometimes be augmented by interest thereon. In several cases, our Supreme Court has allowed legal interest on the amount recovered by the taxpayer from the time payment to the municipal corporation was actually made. For while it is true that legal interest may not be recovered on refund of internal revenue taxes or any other national tax, the basis of that rule is the sovereign character of the National Government. Accordingly, there is no reason for applying the rule to municipal corporations, which are mere instrumentalities of the state and legal creatures of its legislative organ.[79]

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[76] See cases mentioned in fn. 74.

In the Medina case, *supra*, our Supreme Court adopted the reasoning of the lower court thus: "The amount collected from the theater goers as additional price of admission tickets is not the property of plaintiffs or any of them (theater operators). It is paid by the public. If nobody has the right to claim it, it is those who paid it. Only owners of property have the right to claim said property. The cine owners acted as mere agents of the City in collecting the additional price charged in the sale of admission tickets." (48 O.G. No. 11, 4772).

[77] It is a fair inference from the cases cited in the preceding note that if the proprietor or owner of the business taxed is able to show that he paid the taxes with his own money, that in fact, he did not shift the tax imposed by the illegal ordinance, it seems recovery would lie. This is also hinted in the *Rojas* case, *supra*, where the Supreme Court held that the claim of taxpayer that the taxes were paid with his own money was not supported by the evidence; and also, in the resolution of the Supreme Court on the motion for reconsideration on the *Medina* case, where the Supreme Court ordered the lower court to try the issue of whether the specific taxes sought to be recovered by the operator of the gasoline station were actually paid out of said operator's own pocket or by the public who purchased gasoline.

[78] Relief may be only partial, as in the following cases: Municipality of Cotabato v. Santos, G.R. No. 12757, May 29, 1959; Shell Co. of the Phil. v. Mun. of Sipocot, G.R. No. L-12680, March 20, 1959.

[79] Macondray v. Sarmiento, G.R. No. L-3739; Sarasola v. Trinidad, 40 Phil. 252; Palanca v. City of Manila, 41 Phil. 125; Yeo Loby v. Municipality of Zamboanga, 55 Phil. 656.

The fact is worth mentioning at this junction that costs of the suit, although not actually part of the relief,[80] are sometimes charged against the municipal corporation. This allowance has also been explained by the non-sovereign character of municipal powers. According to our Supreme Court, while it is true that no costs shall be allowed against the Government of the Philippine Islands, where said government is the unsuccessful party, nevertheless, there is a marked difference between the National Government and public corporations, the latter have the attribute of ordinary citizens to sue and be sued; as a consequence the general rule that costs are imposed on the unsuccessful party applies to municipal corporation.[81]

III. SPECIFIC REMEDIES:

We shall proceed to examine at some length the specific remedies whereby the taxpayer is relieved of liability for municipal taxes or license fees, namely: (1) action for declaratory relief; (2) an action for the annulment of the taxing or licensing ordinance in question; (3) an action for refund or taxes or license fees, as well as the ancillary remedy of (4) injunction and the extraordinary legal remedy of (5) mandamus.

A. *Declaratory relief:*

Pursuant to the Rules of Court,[82] taxpayer affected directly by an ordinance imposing a tax or license fees may seek relief therefrom by an action for declaratory relief. In order, however, that such action may prosper, several requisites must be complied with. First, the purpose of the complaint should be the determination of some question of construction or validity arising under such ordinance and a declaration of the taxpayer's right and duties thereunder.[83] Accordingly, the action for declaratory relief is improperly brought if the terms of the ordinance in question are not ambiguous or of doubtful meaning with require a construction thereof by the Court, and if the grounds relied on by the taxpayer are the unconstitutionality or illegality of said ordinance.[84]

Another requisite is that the action must be brought before there has been a breach thereof.[85] While it may be granted that the validity or legality of an ordinance imposing a tax or a license fee, may be drawn into question in an action for declaratory relief,

[80] Macondray & Co Inc. v. Sarmiento, G.R. No. L-3739; Palanca v. City of Manila & Trinidad, 41 Phil. 125; Municipality of Victorias v. Victorias Milling Co., 67 Phil. 733; Yeo Loby et al. v. Municipality of Zamboanga, 55 Phil. 656; Smith Bell Co. v. Municipality of Zamboanga, 55 Phil. 466; Hercules Lumber Co. v. Municipality of Zamboanga, 55 Phil. 653.
[81] Palanca v. City of Manila & Trinidad, 41 Phil. 125.
[82] Rule 66, Rules of Court.
[83] Sec. 1. Rule 66, Rules of Court.
[84] Santos v. Aquino et al., 49 O.G. No. 12, 5344.
[85] Sec. 2, Rule 66, Rules of Court.

such relief must be asked before a violation of the ordinance has been committed. Accordingly, where the tax imposed by the ordinance assailed has not been paid and is everdue at the time the action is brought, the same is improperly denominated action for declaratory relief.[86]

But when payment is duly made, it seems a suit may still be brought by the taxpayer for a declaration as to the scope of the taxing ordinance already complied with. This is perhaps on the theory that there has been no breach of the ordinance within the meaning of the Rules. So it has been held that declaratory relief is the proper action where the taxpayer questioned the applicability of the taxing ordinance to some of its sales, even if the same is brought after payment of the tax due thereon, for the reason that "uncertainty on the applicability of the ordinance to future sales would remain." [87]

B. *Action for annulment:*

Although annulment of the taxing ordinance in question is frequently asked for in actions for declaratory relief [83] and in actions for refund of municipal taxes or license fees,[89] yet it may be the object of an entirely independent action.[90] The power of the courts to afford this mode of relief is recognized in the Revised Administrative Code,[91] in the case of ordinances enacted by the councils of municipalities or municipal districts, and in the corresponding charters,[92] in the case of those enacted by city councils. It provides a particularly apt remedy where the ground relied on by the taxpayer is the invalidity of the ordinance assailed;[93] and there seem to be cases when, from a strict procedural point of view, it may be the only proper action, as (1) when the object of the taxpayer is to resist collection but cannot resort to declaratory relief because a violation of the ordinance has already occurred by non-payment of

[86] Santos v. Aquino et al., 49 O.G. No. 12, 5344. The proper remedy seems to be an action for the annulment of the ordinance in question

[87] Sec. 5, Rule 66, Rules of Court.

[88] Pacific Commercial Co. v. Romualdez et al., 49 Phil. 917; Physical Therapy Organization of the Philippines. Inc. v. Municipal Board of the City of Manila, G.R. No. L-10448, August 30, 1957; Manila Tobacco Association v. City of Manila, G.R. No. L-9549, Dec. 21, 1957; Vega & Gellada v. Municipal Board of the City of Manila, 50 O.G. No. 6, 2456; Association of Customs Brokers et al. v. Municipal Board of the City of Manila et al., 49 O.G. No. 5, 1803; Philippine Motor Association et al. v. City Assessor of Manila et al., G.R. No. L-4442. May 22, 1953; Philippine Transit Association v. Treasurer of the City of Manila et al., G.R. No. L-1274, May 27, 1949.

[89] Smith Bell Co. v. Municipality of Zamboanga, 55 Phil. 466; Yeo Loby et al. v. Municipality of Zamboanga, 55 Phil. 656; Hercules Lumber Co. v. Municipality of Zamboanga, 55 Phil. 653; Li Seng Giap v. Municipality of Daet et al., 54 Phil. 625; Johnston v. Regondola, G.R. No. L-9355, November 26, 1957.

[90] Punsalan et al. v. Municipal Board of the City of Manila. 50 O.G. 2485; Yap Tuk Wing & Co. Inc. v. Municipal Board of the City of Manila et al., 68 Phil. 511; Eastern Theatrical et al. v. Altonso et al., G.R. No. L-1104, May 31, 1949; Manila Tobacco Association v. City of Manila, G.R. No. L-9549, Dec. 21, 1957; Recreation & Amusement Association of the Philippines v. City of Manila, G.R. No. L-7922, February 22, 1957.

[91] See fn. 18.

[92] See fn. 17.

[93] The invalidity may be due to any of a number of causes. See earlier portion of this paper under heading "Grounds for Relief."

overdue taxes therein imposed, or [94] (2) when the taxpayer, although he has paid taxes under the ordinance assailed, does not wish to seek refund or he is otherwise prevented from recovering the amount already paid,[95] but he wishes to resist future payment of said taxes.

C. *Action for refund:*

Following the rule in American jurisdiction,[96] our courts have always recognized an action in favor of the taxpayer to recover taxes wrongfully collected from him by the municipal corporation. While no provision of law exists or has existed expressly granting the right of refund, such seems to have been treated always as part of the relief a court may grant in the exercise of judicial power in relation to municipal taxation.[97] It is a cardinal rule in this jurisdiction that fees, taxes and imposts should not be exacted except from those liable to pay them.[98] If a tax or license fee has been wrongfully collected from a taxpayer, the amount received by the municipal corporation, should be returned.

This right of the taxpayer to the refund of wrongful exactions, which subsists independently of statute, may be traced to a respected principle which has long been imbedded in our law—the principle ordaining that no one shall be unjustly enriched at the expense of another.[99] If the municipal corporation exacts a tax or license fee where there is no right to demand it, the ordinance imposing the same being illegal, or unenforceable, or otherwise inapplicable to the taxpayer in question, the obligation to return whatever sum was thus collected arises on the theory of *solutio indebiti*.[100]

It is plain, however, that this is far from a satisfactory explanation of judicial authority to order a refund of taxes illegally or wrongfully collected. All that seems to be required for the application of the doctrine of mistaken payment is that such mistake be made in good fath. If this be so and if this doctrine be at the basis of the right to a refund, then such refund would lie as of right in every case where the collection of the tax is wrongful. As a basis of good faith, the taxpayer may show that his mistake in making

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[94] Santos v. Aquino et al., 49 O.G. No. 12. 5344.

[95] As was the case of the treater owners or operators in the cases mentioned in fn. 74.

[96] "In the absence of statute, there can be no recovery taxes which have been voluntarily paid; but even where there is no such statute, the general rule constantly adhered to by judicial decisions early and late is that if the payment is involuntary, municipal taxes wrongfully exacted may be recovered." (16 McQuillen, pp. 454-455)

[97] Accordingly, as long as it is shown that the collection is wrongful and that payment is involuntary, return of municipal taxes has been ordered by our Supreme Court. Smith Bell Co. v. Municipality of Zamboanga, 55 Phil. 466; Yeo Loby v. Municipality of Zamboanga, 55 Phil. 656; Hercules Lumber Co. v. Municipality of Zamboanga, 55 Phil. 653; Li Seng Giap v. Municipality of Daet et al., 54 Phil. 625; Johnston v. Regondola, G.R. No. L-9355. November 26, 1957; Nieto v. Laggui, 69 Phil. 96; Pacific Commercial Co. v. Romualdez et al. 49 Phil. 917; Batangas Transportation Co. v. Treasurer of Batangas et al., 52 Phil. 190; Manila Electric Co. v. Posadas, 65 Phil. 454; Saldaña v. City of Iloilo, G.R. No. L-10470, June 26, 1958.

[98] City of Iloilo v. Pinzon, G.R. No. L-7552, May 31, 1955.

[99] Article 2142 of the New Civil Code.

[100] Arts. 2154-2155 of the Civil Code.

payment sprang from a mistake in the construction of application of a doubtful or difficult question of law involved in the taxing ordinance concerned. Once this is shown, the refund ought to follow as a matter of law. But this is hardly the case. It is not enough, the decisions seem to suggest, that the collection was wrongful, in the sense that it was not authorized by law, nor that the payment was by mistake in the sense that the taxpayer was not really liable. To be entitled to a refund, the person who paid the tax should have also made the payment involuntarily, as we shall later see.

In this connection, we borrow largely from the American rule earlier adverted to. The decisions make it clear that in order to recover taxes paid to a municipal corporation, the taxpayer must show, as grounds for a cause of action:[101] (1) illegality of the tax, in that it is unauthorized or that its collection in a particular case is wrongful, (2) involuntariness of payment, in that the tax was paid under some coercion or duress, and (3) the timeliness of the action, in that it is brought within the time prescribed by the controlling statute of limitations. The circumstances which make the tax illegal or its collection wrongful have already been treated elsewhere (see *Grounds for Relief, supra*), so we shall limit our discussion to the two other requisites, that is, protest and prescription.

1. *Protest:*

Since the right of refund, as has been said, is not based on any specific statute, it is essential so as to allow recovery thereof, that the payment of the municipal tax has been made involuntarily. The rule in American jurisdictions in this connection, is that some element of coercion or compulsion should have induced the payment of the tax to be recovered; without duress, it seems the action for refund cannot prosper, although protest (in its strict sense) has been made; contrariwise, where duress is present, recovery will be allowed, although no protest attended payment.[102]

Our Supreme Court, however, seems to perceive no strict distinction between involuntary payment and payment under protest, and appears to have always regarded payment under protest on record as payment under duress and each payment attended by some element of coercion or compulsion as payment under protest. It has held to be a doctrine established for many years in this jurisdiction that a mere protest of record against the payment of an illegal tax is sufficient to constitute an involuntary payment, the reason being

[101] It is at least doubtful whether prior presentation of the claim for refund is essential for maintaining the action. It seems, however, that although it is better procedure to exhaust administrative remedies by such prior presentation of claim, it is not a condition precedent to an action to recover wrongful municipal taxes, it not being required specifically by statute. (44 C.J. 1460; 61 C.J. 998)

[102] 64 C.J.S. pp. 827, *et seq.*

that since the taxpayer indicates by the protest that he is yielding to what he cannot prevent, the implied duress under which payment is made should be recognized.[103] It has also been held that although no actual protest attended the payment, the required protest subsists where some circumstance shows involuntariness of payment, as in the case of the taxpayer who, prior to bringing the action for refund, addressed two petitions to the Secretary of Finance questioning the legality of the ordinance imposing the tax and indirectly seeking the refund of taxes paid thereunder.[104] The Court seemed to have held the opinion that such conduct of the taxpayer was incompatible with voluntary payment.

Such seems to be the rule where no statute prescribes protest as a condition for assailing the validity of a tax. For the requirement of a protest is purely statutory and is therefore not necessary in the absence of a provision of law specifically prescribing it. But where there is such a provision, protest is essential and a mere showing of involuntariness might not be regarded as an adequate substitute.[105] In this connection, it seems to be immaterial whether the suit is one for refund or one for annulment of a taxing ordinance or for declaratory relief where refund is prayed for as part of the relief. Payment under protest must be shown, so that recovery of the sum paid will lie. From this, the conclusion may be hazarded that, if in connection with judicial remedies recognized or regulated by statute, payment under protest is required, a showing of protest is essential to recovery of the tax, whether in a suit for refund or in some other action. On the other hand, if no provision exists with respect to such remedies requiring protest, a showing thereof seems not to be necessary and recovery may be had under the general rule that duress, actual or implied, is sufficient to make the payment involuntary.

The rule as to protest varies with our different municipal corporations. Under the law governing taxation in the cities, the requirement subsists, but under that in the municipalities, it seems there is none.

An examination of the charters of our various cities show that almost all include a provision for payment under protest as a requirement for any suit assailing the validity of a municipal tax.[106] However, a difference obtains among some of them, in that while

[103] Zaragosa v. Alfonso, 46 Phil. 159.
[104] Mendoza, Santos & Co. v. Municipality of Meycauayan, G.R. Nos. L-6069-6070, April 30, 1954.
[105] Visayan Electric Co., S.A. v. City of Dumaguete et al., G R. No. L-10787, December 17, 1957. where it was held that since the charter of Dumaguete City (Sec. 57, R.A. No. 327) required protest as a condition for a suit assailing the validity of the tax assessed under the charter, and taxpayer paid amounts sought to be recovered without such protest, the action for refund must necessarily fail.
[106] See fn. 17

most of the charters impose the requirement with reference to all municipal taxes authorized thereunder,[107] some impose the requirement only with reference to the property tax levied by the city on real property and improvements thereon.[108] Adverting to the principle that the requirement of protest is statutory, the significance of the omission in these latter charters (and they are only a few) is that, with the exception of the property tax on realty, a right to refund exists with respect to all taxes levied thereunder even if no protest has been made, as long as the element of involuntariness attended payment.

As to municipalities and municipal districts, there seems to be no applicable provision of law requiring payment under protest as a condition precedent to any of the judicial remedies against wrongful taxation. It is true that under the first Municipal Code, a provision to that effect existed with reference to a suit assailing the validity of a tax assessed thereunder, but such provision has not been reproduced in that part of the Revised Administrative Code governing municipalities and municipal districts, nor can any provision similar to it be found in any special statute regulating taxation by municipalities or municipal districts. Accordingly, it is submitted, although a decision exists with *obiter dictum* which indicates a contrary conclusion.[109] that taxes and license fees wrongfully collected by municipalities or municipal districts may be recovered judicially even if the same were not paid under formal protest, as long as some coercion or duress was exerted as to make the payment involuntary.

2. *Prescription:*

That the statute of limitations applies to the action for refund, there can be little doubt;[110] but there is much uncertainty as to which prescriptive period should control. While it has been claimed that such period should be six years under Article 1165 of the New Civil Code, or at least four years under Sec. 43, par. 3, of Act No. 190, our Supreme Court has declined to rule on that point.[111]

[107] See first paragraph of fn. 17

[108] These cities are Manila, Quezon City, Cavite City, Basilan City, Trece Martires City, Iloilo City and Cebu City. See second paragraph under fn. 17.

Although recovery would lie as to taxes paid without protest in these municipal corporations, nevertheless, the requirement in the general rule applies, that there must at least have been some implied duress attending the payment. But this is a highly debatable question, as no categorical ruling has yet been made by our Supreme Court with reference thereto.

[109] Gavino v. Municipality of Calapan, 71 Phil. 438. This case cites Fernandez v. Shearer (19 Phil. 78), but this latter decision was based on the requirements stated in sec. 84 of Act No. 82, otherwise known as the Municipal Code, which provision finds no counterpart in the present Revised Administrative Code, save in those chapters relating to chartered cities like Baguio. See also Castillo, J.G. THE LAW ON LOCAL TAXATION (Manila, 1954) pp. 217-218.

[110] Prescription of actions is now governed by chap. 3, title V, Book III of the Civil Code. The rule is that actions prescribe; imprescriptible actions are few and highly exceptional.

[111] Atkins Kroll & Co. v. City of Manila et al., G.R. No. L-11381, April 28, 1959; Wise & Co. v. City of Manila, G.R. No. L-9156, April 29, 1957.

Ordinarily, the time of prescription should begin to run from the date of payment of the tax to be recovered.[112] It has been held, however, that where refund is sought pursuant to an ordinance authorizing and appropriating funds for such purpose, the cause of action for refund is deemed to have accrued only from the moment of approval of said ordinance, and, therefore, the period of prescription begins to run only from such date of approval.[113]

On the assumption then that either the six-year period or the four-year period referred to above constitutes the statute of limitations with respect to the action for refund, recovery of inspection fees wrongfully collected by the City of Manila cannot be denied on the ground of prescription, where the ordinance authorizing refund was approved October 31, 1952, and the action to recover thereunder was brought October 31, 1956.[114]

D. *Injunction:*

Injunction is an ancillary remedy affored the taxpayer who seeks to resist collection of the taxes or license fees by means of an action for declaratory relief or a suit to annul the ordinance imposing the same on the ground of illegality or some other fatal defect. It usually takes the form of a preliminary injunction granted at some stage of the action prior to final judgment.

While in some meritorious cases the remedy has been granted the taxpayer,[115] it has been refused as a general rule,[116] no doubt, for the reason that its indiscriminate use will unduly hamper the collection of municipal revenues. In this regard, we follow the universal abherrence obtaining in American jurisdictions as regards the use of injunction to restrain the collection of taxes.[117] Stiff requirements, either imposed by statute or by judicial self-restraint, have to be hurdled before the writ could issue. There has to be a showing, in each particular case, that the taxing ordinance in question is clearly illegal, that the taxpayer has no other adequate remedy, and that the injury which the latter will suffer as a result of its enforcement is irreparable or will tend to make the judgment ineffectual.[118]

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[112] 61 C.J. 1000

[113] Wise & Co. v. City of Manila, G.R. No. L-9156, April 29, 1957.

[114] See fn. 99

[115] See fn. 29

[116] Rafael v. Kaminer, 25 Phil. 344 is a good example. In Zaragosa v. Alfonso, 46 Phil. 159, a case involving refund, the Supreme Court made the observation that the rule is that, apart from special circumstances, the taxpayer cannot interfere by injunction with the collection of revenues

[117] "The courts generally decline to disturb, by injunction, the exercise of discretion in levying taxes within the power of the acting authorities." (16 McQuillen, pp. 443-444). See also 61 C.J. 1070.

[118] 61 C.J. 1071-1075

E. *Mandamus:*

Ordinarily, the right to refund, when subsisting in behalf of a proper party, must be enforced through an ordinance suit for the recovery of money and through the extraordinary legal remedy of mandamus.[119] Under certain special circumstances, however, the writ of mandamus may, nevertheless, be availed of to enforce refund of wrongful exections by municipal corporations, for the reason that in such exceptional cases, the right of the taxpayer is clear and needs no litigation. If an ordinary suit were resorted to, there would be needless delay and prejudice to the taxpayer.

On this theory, a writ of mandamus to compel refund of license fees has been granted by our Supreme Court in at least one case. Here, it was shown beyond a doubt that the Auditor General had already authorized the payment of the claims for refund, that the President of the Philippines had affirmed the decision of the Auditor, and that the Municipal Board of the City of Manila had already appropriated the funds necessary for the payment of such claims. Our Supreme Court said that under such circumstances, an ordinary action would be superfluous and inadequate; consequently, it issued a writ of mandamus against the City Treasurer of Manila to make the overdue refunds.[120]

IV. CONCLUSIONS:

In conclusion, we venture the following observations. The municipal taxpayer in the Islands, like his counterpart elsewhere, is relieved of unlawful or wrongful exactions by his municipal corporation through judicial intervention. The relief afforded, whether by way of absolution from future payment or refund of taxes already paid or both, is not founded so much upon statute as upon power of the courts to protect property rights from a taking unauthorized by due process. The choice of particular remedies depend, naturally, upon the object. Where the chief aim of the aggrieved taxpayer is absolution from future payment, he may petition for declaratory relief or for annulment of the taxing ordinance concerned. On the other hand, if the goal be recovery of taxes already paid, the most appropriate remedy is a suit for refund. Frequently, both modes of relief can be pursued concurrently, especially in those cases where the aggrieved taxpayer rests his claim on the ground that the tax in question is unconstitutional, or illegal for want of statutory authority, or inapplicable to him. Refund may then be sought along

[119] Sec. 3, Rule 67, Rules of Court.
[120] Subido et al. v. Lacson et al., G.R. No. L-9957, April 25, 1958.

with declaratory relief or annulment of the ordinance involved. But whichever particular remedy is pursued, the aggrieved taxpayer must be careful to comply with the requirements laid down in pertinent statutes and decisions. This is particularly true where refund is sought. To authorize recovery, our courts require that the suit be brought before the lapse of the appropriate reglamentary period and that the wrongful payment must have been made under protest when prescribed by statute, or at least under some form of duress.

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