THE TAXING POWER OF MUNICIPAL CORPORATIONS IN THE PHILIPPINES

PERFECTO V. FERNANDEZ *

I. INTRODUCTORY STATEMENT:

Among the many changes wrought in our social life during the past sixty years, not the least is the increasing authority of our municipal corporations.[1] This has been most significant in the field of taxation. From modest beginnings, the municipal taxing power has gradually expanded into substantial authority. While still limited when compared with the revenue preserves of the national government, its scope has extended to major areas of economic activity and privilege. Previously, it was confined to subjects within abbreviated statutory enumerations and even then, only to such as were in the nature of business for private gain. Before the Commonwealth period, these barriers were overleapt. Municipal authority to tax came to embrace, besides activities primarily for profit, occupations where the element of gain is incidental, as in the various professions. More than this, it ceased to be limited to gainful activities, it was extended to pecuniary relations, such as ownership of profit-earning property or enjoyment of certain income-producing privileges.[2] This expansion is due in part to a radical change in the form or manner by which the power to tax is granted. Initially specific, it became general. From a license limited to specified objects, it was converted into a general warrant reaching into every fruitful source of municipal revenue, subject to certain stated exceptions.

1. *Historical background:*

The inadequacy in taxing power with which our municipal corporations began the century is not without historical justification. Our people were virtually without experience in self-government, not only on the national level but on the local as well. Throughout the three centuries of Spanish rule, their political innocence was adeptly maintained. To be sure, there was some native participation in local administration, but this was confined to the principalia

* A.B., LL.B., (U.P.); Lecturer in Law, College of Law, U.P.; and Legal Officer, University of the Philippines.

[1] For purposes of this study, the term "municipal corporations" will be taken to refer to the chartered cities, municipalities and municipal districts. These entities enjoy substantial taxing power, which the provinces do not share.

[2] It has been held, under statutory authority existing since 1928 (Act No. 3422, as amended; C.A. No. 472; and R.A. No. 2264) that although ownership of fishponds may not constitute a "business", owners thereof are subject to an ordinance imposing "just and uniform taxes" on them for "local public purposes" (People v. Mendares, G.R. No. L-6975, May 27, 1955).

consisting of a few well-to-do citizens.[3] What was more, such participation called for the exercise of very little power. The political subdivisions of the time did not at all correspond with local governments as we now understand the term. The *pueblos* or towns were not municipal corporations. They were simply administrative units under the full control of the central government, wholly without color of corporate authority and devoid of any pretensions to autonomy.[4] Finally, what little power was given the local officials was exercised only under the superintendence, at least, of the parish priest, who was usually a friar and a Spaniard.[5]

These observations apply with peculiar force to matters of taxation. The pueblos were wholly without power to levy taxes for local purposes. Their role was limited to being units for administration, assessment and collection of taxes and other imposts prescribed by the central government, whether insular or peninsular.[6] In the discharge of these functions, municipal authority was split between the local officials and the parish priest. The latter performed multiple functions in this connection. He certified to the census of taxpayers on which assessments and tax estimates were based. He was inspector of the entire tax-collection process. Towards the end of the Spanish regime he was made, in the centers of population, the president of the board of taxation. Finally, in many cases, he audited the books and accounts pertaining to the tax proceeds.[7] Actual collections were made by the headmen of the various *barangays*, or in the case of certain excise taxes, by the lessees to whom these have been farmed out for definite sums.[8] The gobernadorcillo supervised such collection but undoubtedly he performed this function, in no less degree than the others, under the shadow of priestly power. He was accountable for any lapse of efficiency in such collections. He incurred fines or imprisonment if the total proceeds did not tally with previous estimates or assessments.[9]

For the financing of local affairs and needs, the laws of Spain set aside a portion of the tax collections as a special fund for such

---

[3] CORPUZ, O. D., THE BUREAUCRACY IN THE PHILIPPINES, University of the Philippines, Quezon City (1957), p. 108.

[4] *Ibid.* p. 111. Also, SINCO, V. G. and CORTES, I., PHILIPPINE LAW ON LOCAL GOVERNMENTS, Community Publishers, Manila (1959) 2d Ed., p. 2.

Under the Maura Law, promulgated in May, 1893, the municipal tribunal or council enjoyed corporate personality (Report of the Philippine Commission (1900), pp. 44-60; SINCO & CORTES, *op. cit.*, pp. 2-7). But as the decree was never implemented, the enjoyment by the pueblos of legal personality never went beyond paper during the Spanish regime (CORPUZ, fn. 39, pp. 124-125).

The *ayuntamiento* was a possible exception, corresponding as it does to the English concept of municipal corporation (SINCO & CORTES, p. 24). But virtually throughout the Spanish regime, only Manila was organized as an *ayuntamiento*, although during the last decade of the Spanish rule, authority was given to certain *pueblos* to organize *ayuntamientos*, including Cebu, Iloilo, Jaro, Batangas, Albay, Nueva Caceres, and Vigan, by the Royal Order of November 12, 1859.

[5] CORPUZ, 136.

[6] *Ibid.*, 111.

[7] Sen. Doc. No. 190, 56th Congress, 2d Sess. Feb 25, 1901 (Washington D.C., Government Printing Office, 1901), pp. 69-71.

[8] CORPUZ, 107-108, 111

[9] *Ibid.*, 111-112.

purpose. Earlier called "*cajas de censos y bienes de comunidad*," the fund came to be known as "*fundos locales*." [10] Unfortunately, however, the amounts so earmarked were seldom applied to local needs. Frequently, they were diverted to the pockets of Spanish bureaucrats or used to meet the expenses of the central government.[11] As a result, local officials were forced to rely on unauthorized exactions to meet municipal salaries and other expenses of local administration. The taxing power thus exercised was illegal in conception and certainly abusive in practice.[12]

In brief, then, during the long centuries of Spanish rule, the local units of government were kept in penury. Wholly bereft of any power, under the laws of the Indies, to raise funds on their own, they were made bankrupt by the diversion of funds which had by law been assigned to them. As a result the various pueblos had to resort to illicit financing of legitimate local activities. As unlawful exaction suffers from rather obvious limitations, the yield must have been much less than what was needful.

Expertness in mulcting, however, is hardly the sort of experience as would qualify local governments for wise administration of so pervasive a power as taxation. At the turn of the century, when municipal corporations were set up throughout the country,[13] the new regime must have had serious apprehensions as to possible mischievous consequences of a full authority to tax in the hands of certain inexperienced, perhaps even inept. But as native self-government on the local level would be empty without the power to raise funds for local purposes, it was equally imperative that the authority to tax had to be conferred on municipal corporations to be set up. The solution was to provide for a highly limited taxing power. The same law which gave the existing pueblos a corporate existence provided for an authority to tax which was subject to many restrictions. It was made plain that a limited power was conferred. Municipal revenues, besides fees received under licensing power, were to be derived only from sources enumerated in the law. Our municipal

---

[10] *Ibid.*, 114.
[11] *Ibid.*, 85, 114, 139-140.
[12] *Ibid.*, 114-115
[13] Local governments were first set up during the American regime by Gen. Order No. 43, series of 1899, later superseded by Gen. Order No. 40, series of 1900. These were reorganized upon establishment of the civil government (Sec. 95, Act No. 82) and their powers replaced (Sec. 96, Act No. 82).
The foundations for an adequate municipal government were laid in Pres. McKinley's Instructions of April 7, 1900 to the Second Philippine Commission, which was directed and enjoined "to devote their attention in the first instance to the establishment of municipal governments in which the natives of the islands, both in the cities and rural communities, shall be afforded the opportunity *to manage their own local affairs to the fullest extent of which they are capable, and subject to the least degree of supervision and control* which a careful study of their capacities and observation of the working of native control show to be consistent with the maintenance of law, order, and loyalty." (Underscoring supplied).
Pursuant to this directive, Act No. 82, otherwise known as the Municipal Code, was enacted on January 31, 1901, providing for the organization and government of municipalties. This law did not apply to Manila, which was incorporated as a city under Act No. 183, effective Aug. 7, 1901, nor to settlements of non-Christian tribes (Sec. 1, Act No. 82).

corporations began with a taxing power confined to a very narrow field of operation, in addition to other restrictions.[14]

This condition of things, of course, did not endure. The same years which witnessed increasing autonomy on the national level, marked a series of changes expanding municipal power to tax. This was true not only of the chartered cities but of the municipalities as well. The trend towards greater taxing authority of municipal corporations continued even after our independence.[15] More and more cities were set up with broad powers to finance their activities.[16] Under the Local Autonomy Law, a wide range of taxing powers have been conferred on municipalities equally with the chartered cities.[17] Even the barrios have been established as quasi-municipal corporations enjoying a limited power to tax.[18]

2. *Forces behind the expansion:*

Virtually the same forces in our society which expanded the functions of the central government were responsible for the increase in municipal taxing power. During the sixty years just past, the advent of material progress, which was utterly without precedent

---

[14] The subjects of taxation authorized under the Municipal Code included only the following: (1) Under Section 40: the keeping of dogs (subsection *i*); cock-fighting, the keeping or training of fighting cocks and cockpits (subsection *j*);

(2) Under Section 43: lands, buildings and improvements (subsection *a*); and draft carts having tires of certain widths (subsection *j*).

Among the restrictions prescribed were the requirements that taxation should be just and uniform (Sec. 42), that the revenues raised thereby should be used exclusively for local public purposes (Sec. 43, par 1); and the limitations as to amounts or rates of tax (Sec. 43, pars. *a* and *j*), as to manner of collection (Sec. 48) and as to prohibited impositions (Sec. 44).

[15] The more significant legislation affecting the taxing power of the various municipalities after the Municipal Code were Act No. 2657, otherwise known as the Administrative Code (Secs. 2233, 2274, 2253, 2259, 2613-2615); the Revised Administrative Code of 1917 (Secs. 2289, 2307-2308, 2313, 2627-2629); Act No. 3422, as amended by Acts Nos. 3700, 3790 and 4019; and C.A. No. 472. After our Republic was established, important statutes on this point were R.A. Nos. 1425 and 2264.

[16] We began with only one city, which was Manila (Act No. 183; Chap. 60, Rev. Adm. Code; R.A. N. 409), followed by Baguio (Chap. 61, Rev. Adm. Code, with amendments).

During the Commonwealth period ten others were organized, namely: Bacolod (C.A. No. 326); Cavite (C.A. No. 547); Cebu (C.A. No. 58); Dansalan (C.A. No. 592) now known as Marawi City (R.A. No. 1552); Davao (C.A. No. 51); Iloilo (C.A. No. 57); Quezon City (C.A. No. 502 subsequently superseded by R.A. No. 537); San Pablo (C.A. No. 520); Tagaytay (C.A. No. 338); and Zamboanga (C.A. No. 39).

Since the establishment of the Republic, the following other cities have been created: Cagayan de Oro (R.A. No. 521); Butuan (R.A. No. 523); Lipa (R.A. No. 162); Dagupan (R.A. No. 170); Ormoc (R.A. No. 179); Naga (R.A. No. 305); Pasay (R.A. No. 183); Basilan (R.A. No. 288); Ozamiz (R.A. No. 321); Dumaguete (R.A. No. 327); Calbayog (R.A. No. 398); Cabanatuan (R.A. No. 526); Iligan (R.A. No. 525); Roxas (R.A. No. 603); Tacloban (R.A. No. 760 as amended by R.A. No. 2642); Trece Martires (R.A. No. 981); Silay (R.A. No. 981 as amended by R.A. No. 2139); Silay (R.A. No. 1621) and Toledo (R.A. No. 2688); Legaspi was chartered under R.A. No. 306, dissolved under R.A. No 993, and rechartered under R.A. No. 2234; Cotabato (R.A. No. 2364); and San Carlos (R.A. 2643).

[17] Sec. 2, R.A. No. 2264. This law took effect on June 19, 1959.

[18] R.A. No. 2379, granting autonomy to the barrios of the Philippines and establishing them as quasi-municipal corporations (Sec. 2), was approved on June 30, 1959.

About the only subject matter expressly authorized to be taxed are gamecocks owned by residents of the barrio as well as the cockfights conducted therein except where such cockfights are forbidden by municipal ordinance (Sec. 14, par. *o*, R.A. No. 2379)

With respect to municipal districts, now governed by Chapter 64 of the Rev. Adm. Code as amended by R.A. No. 1515 (1956), there have been important changes. Originally, their powers of taxation were exerted through the provincial board, subject to the approval of the Secretary of Interior (Sec. 2631, Rev. Adm. Code). The municipal district councils are now empowered to levy and collect taxes, as provided by law (Sec. 2631, par. *c*, as amended by R.A. No. 1515).

Significant legislation on the taxing power of municipal districts were the Revised Adm. Code (Sec. 2631, in relation to 2307-2308 and 2313); C.A. No. 472; and now, the Local Autonomy Act, R.A. No. 2264.

throughout the dreary centuries of Spanish rule, was transforming barrios into towns and towns into cities. This process was accelerated by a rapid spurt in population growth. Urbanization swept Luzon and the Visayas, especially in those areas where economic opportunity beckoned to rural folk from centers of industry.

Such changes posed a serious challenge to municipal government. The spread of factories, the proliferation of business houses, the ferment of economic activity, the increase in traffic, and the concentration of population combined to produce new problems and to aggravate existing ones. To deal with them, additional municipal functions had to be assumed. Trades and occupations are regulated, hurtful activities or enterprises are suppressed, the licensing power is extended to embrace every matter which affects the public interest. In addition, existing services had to be strengthened. These relate chiefly to public health and sanitation, law enforcement, public safety and communal recreation.

The adequacy of such functions and services, of course, depend on the adequacy of municipal revenues. The most feasible way of insuring this is adequacy of the taxing power. This came about step by step. The initial grant of authority to tax, which was highly limited, was gradually expanded to cover virtually all forms of entrepreneurial activity, from commerce to administration of landed property. Today, every species of property is within the reach of municipal taxing power, with some exceptions. Indeed, so pervasive is such power that its full exercise is likely to invite attack from those who stand to be affected. A few protests have been made, but whether these are the beginnings of a reaction is not known.[19]

In brief, the growth of municipal taxing power stems from increasing municipal responsibilities brought about by complexity in municipal affairs, particularly the business aspect. It is a measure designed to make local government responsive to great public needs. The aim behind its expansion is adequacy of municipal revenues. But while this has been the chief stimulus, it is by no means the only one. There are other considerations, which have favored its enlargement. There is the idea of local autonomy, which carries the implication that local improvements must be financed with local resources and that the community must be given the chance to choose progress and to pay its own way. There is the unwillingness of the central government to continue, much less increase, its subsidy to the local units, being plagued eternally by a disparity between mounting expenditures and inelastic income. It has therefore been

[19] See Manila *Times*, Nov. 7, 1960, p. 4; Nov. 22, 1960, p. 2; Dec. 22, 1960, p. 6; and Dec. 28, 1960, p. 1

most willing to grant a greater taxing authority as a means of evading additional contributions to municipal coffers every year. Then, there is the evident success of business enterprises, which in itself readily justifies its sharing the common burden through the imposition of taxes. This has usually been fortified by the argument that as business prospers under municipal care and protection, it is only just that it be made to pay part of the cost in maintaining municipal services.

All these considerations have aided, in varying degrees, in the evolution of the taxing authority of municipal corporations from a highly limited grant at the turn of the century to the broad and pervasive power it is today.

II. THE NATURE AND SOURCES OF THE TAXING POWER:

1. *The official theory:*

The power to tax does not belong to our municipal corporations as such, it is purely an adventitious function.[20] This is the official view. Our towns and cities actually share some taxing authority and do exercise it in fact, but it is an artificial engraftment, not an inherent attribute. Municipal taxation proceeds from a borrowed, as opposed to a native, competence.

This theory of a delegated power to tax, which our law has established as a principle, springs from our conception of their status. We view these entities as mere creatures of the State, distinct and separate in personality, inferior in capacity, and without existence antecedent to the law through which the State imparts to them a corporate life. Set up for state purposes, they are wholly subject to its sovereign will. This goes for every aspect of their existence, from what they can do and with what means to how long they may live. Their abolition may be decreed, or their powers diminished or enlarged, as the State, through appropriate organs, deems fit. Their capacity is only such as the State has bestowed, measured strictly by a prior concession in some enactment of law.[21]

Thus held, as it were, at arm's length from the State, the municipal corporations could not enjoy the power to tax as an incident to their existence. As taxation is a sovereign function and sovereign

[20] Santos Lumber Co. et al. v. City of Cebu et al., G.R. No. L-10197, Jan. 22, 1958; Icard v. City Council of Baguio, 46 O.G. Supp. 11, p. 320; City of Iloilo v. Villanueva, G.R. No. L-12695, March 25, 1959; Saidana v. City of Iloilo, G.R. No. L-10470, June 26, 1958; We Wa Yu v. City of Lipa, G.R. No. L-9167, Sept. 27, 1956; Batangas Transportation Company v. Provincial Treasurer of Batangas, 52 Phil. 190; Pacific Commercial Company v. Romualdez, 49 Phil. 917; Cu Unjieng v. Patstone, 42 Phil. 818; Vega et al. v. City of Iloilo, 50 O.G. 2456; Rojas & Bros. v. City of Cavite, G.R. No. L-10730, May 26, 1958; Medina v. City of Baguio, 48 O.G. 4769.

[21] "Municipal corporations in the Philippines are mere creatures of Congress. As such, said corporations have only such powers as the legislative department may have deemed fit to grant them." Vega v. City of Iloilo, 50 O.G. 2456. Also *Icard* and *Medina* cases, *supra*.

functions pertain to the State exclusively and no other, it follows very plainly that the taxing function could not spontaneously attach to such inferior entities.[22] Something more is needed than the bare fact that they have been organized and are in operation, before any of them could exercise taxing authority legitimately. That something is delegation. The State, through appropriation action, bestows the taxing authority on a chosen municipal corporation or class of such corporation, which receives it in the nature of a grant and exercises it within the usual limitations of a delegated power.

Briefly put, our law regards our municipal corporations as inferior administrative units, capable of existing without taxing authority and initially devoid of such, which have been subsequently invested with such authority through the dispensation of the central government, subject always to severe restrictions.

This view, persistently official, is not without weaknesses. It has, of course, some historical justification. We have seen that during the long centuries of Spanish rule, the pueblos were never regarded as having any intrinsic power to tax. In fact, they were never given a chance to share in the taxing power. Such inherited prejudice has powerfully influenced our attitude, with the difference that we are now willing to recognize as legitimate any taxing authority which the central government sees fit to grant. Indeed, it would be curious if we did not continue to presuppose a municipal impotence to raise revenue on its own. We are apt to carry the mental habits of our past into the present. For the larger part this process may be unconscious, for basic notions have a momentum of their own.

But howsoever we may be excused in such persistence, we do not entirely escape criticism. The survival of such ancestral attitude is at war with our enlightened commitment to an increasing municipal self-determination. There is hardly any doubt that the extreme bias against municipal taxation during the Spanish rule played a crucial part in the precarious condition of municipal finances and the consequent stagnation of municipal affairs. If this is so, the lesson to be drawn from history in this regard is to change the attitude responsible in part for a historical situation we deplore, not to preserve it. We were perhaps justified in having begun this century with such an attitude, since in all probability we could not help it, but not in keeping it alive after sixty years of enlightened wakefulness.

---

[22] A municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. Its charter must plainly show an intent to confer that power or the corporation cannot assume it. Santos Lumber Co. et al. v. City of Cebu et al., G.R. No. L-10197, Jan. 22, 1958; *Icard v. City Council of Baguio*, 46 O.G. Supp. 11, 320; *Medina v. City of Baguio*, 48 O.G. 4769.

A more technical difficulty lies in the question of delegation. The rule is that legislative power is not to be delegated. But the taxing power is definitely a legislative power; under our present statutes at any rate, the wide range of discretion conferred upon municipal corporations amounts to a faculty that is inescapably legislative. This we concede quite openly in our facile explanation that the grant of municipal power to tax is an exception to the rule.[23] However, it may well be that the defect lies not in the reach of the principle against non-delegation, but in our thinking on the status of municipal corporations and on the source of their taxing power.

2. *A suggested approach:*

In the main, our difficulty stems from a mistaken supposition as to the foundations of local self-government. We see the central government in full control over the organization of the local units and we ascribe, not at all unreasonably, their existence to its will. From its power over the mechanism of local government, we infer that local government is the gift of Congress, which it may take back at will. It is precisely this kind of thinking that underlies the current theory of a municipal impotence to tax without a prior legislative grant.

But it is an inference with which one may easily differ. Not only is it logically defective, it is also without support from first principles in our political system. During Spanish regime, every local government which we experienced was a concession from the central government. It is in keeping then with both theoretical and practical considerations to regard every local function and authority as having proceeded from above. Local government was a royal largesse, a gift from His Majesty, the king of Spain.

But this is not so in our time. We have founded a government which derives its powers from the sovereign people.[24] Insofar as the government acts within its authority, we are all constrained to obey, since obedience is implicit from our consent to its establishment. But in entrusting the exercise of sovereign power to the government, our people had made no absolute surrender of their rights, such that they would enjoy no right save as what the government sees fit to grant. The truth is that there are a number of popular rights existing independently of governmental will and authority and beyond its power to deny or suppress.[25]

---

[23] SINCO, V. G., PHILIPPINE CONSTITUTIONAL LAW (Manila, Community Publishers, 1960), 74; RIVERA, J., LAW OF PUBLIC ADMINISTRATION, (Philippines, Kiko Printing Press, 1955), 223.
The following decisions are helpful, although not squarely on the point: People v. Vera, 65 Phil. 56, 113; Rubi v. Provincial Board, 39 Phil. 660; U.S. v. Salaveria, 39 Phil. 102.
[24] Sec. 1, Art II, Constitution of the Philippines.
[25] Art. III, Constitution of the Philippines.

Among such rights is the right of local government. That the existence of local government is in no way dependent upon Congress, much less the Chief Executive, is implicit in the constitutional recognition of local autonomy, limiting the power of the President to general supervision as may be provided by law.[26] This provision of our fundamental law rejects any control by the President over local governments as well as any legislative conferment of such power. If neither of these political branches of government may control, it follows that they may not abolish or otherwise destroy the existence of local government.

What is subject to their power are particular forms of organization through which local government operates. Thus, municipal corporations may be abolished, as when a town becomes a city.[27] It does not mean, however, that the locality concerned is left without local government. A theoretical situation may, of course, exist where a municipality is eliminated and no other public corporation assumes jurisdiction over its former territory. In such event, it is not to be supposed that the community concerned has lost its right to self-government. It may assert such right and govern itself the best way it can. But as a practical matter, the right of local government has never been placed in such jeopardy, for as soon as a municipal corporation is abolished through merger or otherwise, another organization takes the place of the defunct corporation through which local government is exercised.

If we are correct in this analysis, it is plain that the foundation of local government is a popular right recognized by our Constitution. Like all other popular rights, it is subject to the legislative power, which may, however, not suppress, although certainly it may regulate. Such regulation pertains usually to the forms of organization through which local government is exerted and enjoyed. Congress or the President may prescribe for a given community a corporate organization in the form of a town or a city, or may place it under another public corporation already existing. But always there is the duty to see to it that the right of local government may be feasibly exercised through some particular form of municipal organization.

This theory of local government as a fundamental right of the people is, of course, fatal to the hypothesis of municipal taxing power as proceeding from nothing more basic than a legislative grant. It is to be regarded as an incident to the right of local government, since government entails expenditures which it would be impossible to meet without revenue. If a community is entitled to

[26] Par. 1, Sec. 10, Art. VII, Constitution of the Philippines.
[27] See fn. 16.

govern its own affairs, it may be reasonably supposed that it is entitled to raise money through taxation of some kind for such purpose.

This is not to say, however, that such a power may be asserted in derogation of existing laws. Like the other incidents of local government, such as organization, function and jurisdiction, the power to raise revenue is subject to regulation by the legislative power. Congress may prescribe limitations as to subject matter and rates of taxation, among others. But municipal taxing power, thus viewed, is not delegated but merely regulated. As the ultimate source is the Constitution, not legislation, the laws treating of municipal taxation do not operate as a grant of taxing power but a recognition thereof.

This theory of municipal taxation as an incident to the popular right of local government recognized in our Constitution is quite consistent with the known facts and accepted principles in our political system. It is no bar that taxation is a sovereign power, since municipal authority to tax is based on the fundamental law, which allocates public power. Like the equally sovereign prerogatives of eminent domain and police power, it attaches to local governments authorized under the Constitution, as incidental authority without which no government could function as such. At the same time that the legislative power was vested in Congress, comprising these sovereign powers, the recognition of local governments as part of the general governmental structure carried a grant of such powers as essential municipal attributes.

Such parallel but independent conferments of sovereign power did not involve dispersal of sovereignty, as might be easily supposed, because the Constitution envisioned the local governments, not as entities independent of the central government, but as integral parts thereof. This finds confirmation in the fact that before and after the adoption of the Constitution, local governments were by law, as they still are, parts and parcel of the Government of the Republic of the Philippines.[28] In this enjoyment of direct constitutional recognition, local governments, as integral parts of central government machinery, were by no means vested with a singular preferment. Mention may be made of the General Auditing Office, Commission on Elections and Commission on Appointments, which although merely agencies of the Government of the Republic, were

[28] "The Government of the Republic of the Philippines" is a term which refers to the corporate governmental entity through which the functions of government are exercised throughout the Philippines, including, save as the contrary appears from the context, the various arms through which political authority is made effective in the Philippines, whether pertaining to the central Government or to the provincial or municipal branches or other form of local government. (Sec. 2, Revised Adm. Code).

recipients of direct constitutional grants of authority which carry incidental powers.[29]

Like these agencies, local governments were not thereby exempted from regulation by the legislative power. In the same way that Congress has enacted particular rules governing the exercise of constitutional powers by the Auditor General and the Commission on Elections,[30] so it has regulated the exercise of the municipal prerogatives of taxation, police power and eminent domain which are inherent attributes of local governments. As amorphous grants, such powers have a constitutional basis, but the validity of their actual exercise is to be tested by their conformity with the requirements of statute.

Other considerations commend the theory of municipal taxation being propounded. As municipal taxing power is not based on a legislative grant but derived from constitutional recognition of local governments, the difficulties posed by the principle against non-delegation of legislative power are neatly sidestepped. It is likewise fully in line with our goal of local autonomy. Self-determination in municipal affairs requires a self-sufficiency in municipal revenue, which it is possible to approximate only through recognition of the taxing power as an essential attribute of local governments. It also rejects the atavism implicit in the current official view, since it rejects the supposition we share with the Spanish regime of an inherent municipal impotence to tax.

Finally, it is in keeping with the latest legislative trends. Congress has proposed, through the Local Autonomy Act, that in construing legislation affecting the powers of municipal corporations, any doubt should be resolved in their favor.[31] Such approach, while perfectly consistent with the hypothesis that the municipal power to tax is inherent, is quite incompatible with the accepted view that it is merely a grant. As a purely delegated power, the canon naturally and traditionally applicable is that of strict construction.[32] Viewed, however, as an inherent power, its exercise in a particular case could be presumed valid, unless some rule of law explicitly and clearly forbids.[33]

---

[29] Arts. X and XI, Constitution of the Philippines.
[30] Chap. 26, Rev. Adm. Code and the Election Code (R.A. No. 180).
[31] Par. 1, Sec. 12, R.A. No. 2264.
[32] By reason of the limited powers of local governments and the nature thereof, said powers are to be strictly construed and any doubt or ambiguity arising out of the terms used in granting said powers must be resolved against the municipal corporation. Vega et al. v. Mun. Board of Iloilo City, 50 O.G. 2456 (For other cases, see fn. 20).
[33] Par. 1, Sec. 12, R.A. No. 2264.

III. THE SCOPE OF THE TAXING POWER:

Whether viewed as essentially delegated or merely regulated, municipal power to tax is controlled in its particulars by statute. Its scope depends upon the provisions of law in force. This may be expanded or further restricted by appropriate amendments. Whether the change yields one result or the other is a question of legislative discretion. The municipal taxing power may be broadened or limited as Congress, from notions of public policy, deems fit.[34]

1. *The growth of taxing power:*

From the beginning, we made a sharp distinction between two classes of municipal corporations. Municipalities were lumped under one set of rules,[35] while the city of Manila was placed under a special set of regulations called a charter.[36] Needless to say, the taxing power of the city under its charter was more extensive than the taxing power of the towns under the Municipal Code, which imposed numerous restrictions. Such preference, undoubtedly rooted in practical considerations, was equally a matter of legislative discretion and so it remains to this day.[37] The distinction has been preserved. As a rule, the cities, which are individually governed according to their respective charters, enjoy a greater taxing competence than the municipalities, which are still controlled under one set of rules.[38] There are, of course, differences even among the cities. Generally, the older ones, such as Manila, Cebu and Baguio, occupy a preferred position from the viewpoint of taxing authority. Lately, however, the discrepancy in taxing power between the cities and the towns have tended to blur. Under the Local Autonomy Act, common rules on municipal taxation are made equally applicable to the municipalities, municipal districts and the chartered cities.[39]

As has been said earlier, one of the observable trends in the past sixty years has been the growth of municipal taxing power. This has been most significant in the case of the municipalities and municipal districts, which cover not only the bulk of Philippine territory but of our population as well. In the beginning of the cen-

---

[34] Punsalan et al. v. City of Manila, 50 O.G. 2485; Manila Tabacco Association v. City of Manila, G.R. No. L-9549, Dec. 21, 1957

[35] Act No. 82.

[36] Act No. 183.

[37] Why should cities like Manila be permitted to tax goods that other municipalities cannot tax? The answer is easy to find: the need for greater revenue, in view of the city's expanded services and activities. Manila Tobacco Association v. City of Manila, G.R. No. L-9549, Dec. 21, 1957.

It is not an argument against the existence of the power of the City of Manila to tax professionals that other chartered cities as well as municipalities do not possess this power. However unequal the extent of the delegated authority may be, it is not for the courts to judge what particular cities or municipalities should be empowered to impose occupation taxes in addition to those imposed by the National Government. That matter is peculiarly within the domain of the political departments and the courts would do well not to encroach upon it. Punsalan et al. v. City of Manila, 50 O.G. 2485.

[38] Chap. 57, Rev. Adm. Code.

[39] Sec. 2, R.A. No. 2264.

tury, when municipal power to tax was recognized for the first time in the Islands, such power was highly limited. Under the Municipal Code, the towns established could tax only specified sources, which besides being very few, carried a highly limited yield.[40] A few other subjects were added to the list by the Administrative Code,[41] which we recarried over in the Revised Administrative Code.[42]

But the increase was far from substantial. Owing to the chronic insufficiency of municipal revenue, coupled with the unwillingness of the central government to increase the doles to the municipalities and municipal districts, the legislature was persuaded to enlarge the scope of municipal taxing power. For this purpose, a different technique was adopted. Originally, taxation extended only to matters specified in the law. Under Act No. 3422, however, which became effective on the first day of 1928, a general authority to levy municipal taxes was granted for the first time, subject to specified limitations. This marked a big leap towards an adequate municipal taxing power. Under the earlier arrangement, a municipal tax was unauthorized unless imposed upon one of the few enumerated sources; with this change, it was authorized, unless it fell within the terms of some limitation specified in the law.[43] Of course, the exceptions covered substantial ground, with the enumeration beginning *a* and ending with *t*.[44] Such a long list of exclusions persisted even in C.A. No. 472, enacted in 1940,[45] although certain administrative restrictions were eliminated and others were diminished.[46] The situation did not change at all, until lately when the Local Autonomy Act was passed. The exclusions, still substantial, were diminished, beginning with *a* and ending with *k*.[47] Executive supervision also dwindled into administrative oversight. The requirement of prior approval of tax ordinances under certain conditions declined into a discretion to suspend in the event of abuse.[48] This statute, however, does not provide the sole measure of municipal power to tax. In addition, we must consider, in the case of the cities, their respective

---

[40] See, for example, the observations in the Supplemental Report on Municipal Finance, Report of the Philippine Commission, 1903, pp.

[41] Secs. 2253-2254, 2279, 2611-2616, Act No. 2657.

[42] Secs. 2307-2308, 2313, 2627-2629, Rev. Adm. Code.

[43] With the enactment of Act No. 3422, the law proceeded in an inverse direction from that pursued in the previous legislation, in that, whereas the municipal councils had previously exercised a power of taxation over certain subjects only, they were now given general authority, subject to defined exceptions. Smith, Bell & Co., Ltd., v. Mun. of Zamboanga, 55 Phil. 466.

[44] Sec. 1, Act No. 3129. The law was, however, held not to have repealed the provisions of the Rev. Adm. Code vesting the municipalities with licensing power, with the effect that the subjects therein enumerated remained outside the general municipal authority to tax. Thus, steam engines which were subject to the municipal licensing power under Sec. 2625 of the Rev. Adm. Code were not subject to municipal taxing power and an imposition of a tax thereon by ordinance was ultra vires. Smith, Bell & Co., Ltd. v. Mun. of Zamboanga, 55 Phil 466.

[45] This law was also applicable to municipal districts (Sec. 1, C.A. No. 472) but not to chartered cities. Uy Matiao & Co. v. City of Cebu et al., 49 O.G. 1797.

[46] Sec. 4, C.A. No. 472. The requirement of approval by the Secretary of Interior was eliminated.

[47] Sec. 2, R.A. No. 2264.

[48] *Ibid*., 2d paragraph.

charters; and the pertinent provisions of the Revised Administrative Code, in the case of municipalities and municipal districts.[49]

2. *Taxation distinguished from police power:*

There is one circumstance which has complicated the rather simple matter of ascertaining the scope of municipal taxing power. It is the fact that the same statutes provide for both municipal licensing as well as taxing powers.[50] The effect has been much misunderstanding and a lot of unnecessary litigation. The controversies tended to center on either of two questions. Is the exaction imposed by the ordinance, whatever be its name, truly a tax or is it merely a license fee? If it is a tax, is it within the taxing power of the municipal corporation concerned?

Whether an exaction is a tax or not is frequently a decisive issue in those cases where the municipal corporation involved is admittedly without power to impose a tax in the particular case. The bone of contention lies, as a rule, in the purpose of the exaction.[51] If imposed merely for regulation, it is a license fee and is valid even in the absence of a power to tax. On the other hand, if the purpose is principally the raising of revenue, then the imposition is a tax, which is invalid in the absence of a power to imposed it.[52]

Whether the purpose is merely regulation or chiefly raising of revenue is usually difficult of determination. The designation in the ordinance, as a rule, is not controlling. The term "license fees," for example, has been used indiscrimnately in designating impositions in the exercise of either the licensing or regulatory power,

---

[49] Sec. 10 of the Local Autonomy Act preserved to the various municipal corporations affected whatever powers they were enjoying at the time of the enactment of the law.

[50] Secs. 40, 43, Act. No. 82; Chaps. 64 and 57, Rev. Adm. Code; C.A. No. 472; and Sec. 2, R.A. No. 2264. For the city charters, see fn. 16.

[51] City of Iloilo v. Villanueva, G.R. No. L-12695, March 23, 1959; Saldaña v. City of Iloilo, G.R. No. L-10470, June 26, 1958; Panaligan v. City of Tacloban, G.R. No. L-9319, Sept. 27, 1957; Morcoin v. City of Manila, G.R. No. L-15351, Jan. 28, 1961; Vega v. City of Iloilo, 50 O.G. 2456; Arong v. Raffiñan & Inclino, G.R. No. L-8673-74, Feb. 18, 1956; Hecules Lumber Co. v. Mun. of Zamboanga, 55 Phil. 653; Pacific Commercial Co. v. Romualdez, 49 Phil. 917; Rojas & Bros. v. City of Cavite, G.R. No. L-10730, May 26, 1958; Cu Unjieng v. Patstone, 42 Phil. 818; Recreation & Amusement Association of the Philippines v. City of Manila, G.R. No. L-7922, Feb. 22, 1957.

Where the ordinance in question had for its principal purpose not regulation but the raising of revenue and such ordinance springs from the regulatory power granted the city for police purposes, the imposition therein is invalid. Pacific Commercial Company v. Romualdez et al., 49 Phil. 917.

[52] In the following cases, the imposition was valid as constituting duly authorized license fees: Recreation & Amusement Association of the Philippines v. City of Manila, G.R. No. L-7922, Feb. 22, 1957; Physical Therapy Organization of the Philippines, Inc. v. Mun. Brd. of the City of Manila, G.R. No. L-10448, Aug. 30, 1957; Arquiza Luta v. Mun. of Zamboanga, 50 Phil. 748; Gavino v. Mun. of Calapan, 71 Phil. 438; City Manila v. La Granja, Inc., 73 Phil. 585; Carino v. Jamoralne, 56 Phil. 188.

But in the following cases, the impositions, purporting to be license fees, were invalidated as unauthorized taxes: Rojas & Bros. v. City of Cavite, G.R. No. L-10730, May 26, 1958; Cu Unjieng v. Patstone, 42 Phil. 818; Hercules Lumber Co. v. Mun. of Zamboanga, 55 Phil. 653; Pacific Commercial Co. v. Romualdez et. al., 49 Phil. 917; Smith, Bell Co., Ltd. v. Mun. of Zamboanga, 55 Phil. 466; City of Iloilo v. Villanueva, G.R. No. L-12695, March 23, 1959; Saldana v. City of Iloilo, G.R. No. L-10470, June 26, 1958; Panaligan v. City of Tacloban et. al., G.R. No. L-9319, Sept. 27, 1957; Arong v. Raffinan & Inclino (G.R. No. L-8673) and Young et. al. v. Raffinan & Zabate (G.R. No. L-8674), Feb. 18, 1956; Manila Lighter Trans. Co. Inc. v. Mun. Bd. of Cavite City et. al., G.R. No. L-6848, April 27, 1956; Morcoin v. City of Manila, G.R. No. L-15351, Jan. 28, 1961.

or the taxing power.[53] Such designation, however, in the ordinance has been sometimes considered as evidencing the purpose of the imposition. Thus, it has been held that where the imposition is labelled by the ordinance itself as a tax and the amount is substantial, the same is a tax and not a mere fee for regulatory purposes.[54]

As a rule, the circumstance usually considered as evidencing the true purpose of the imposition is the amount thereof.[55] For an imposition to be considered a license fee, it must bear a reasonable relation to the probable expenses of regulation.[56] A distinction is made in this regard between useful or non-useful occupations or enterprises.[57] Where the trade or enterprise is useful, the license fee may only be a sufficient amount to include the expenses of issuing the license and the cost of the necessary inspection and police surveillance, taking into account not only the expense of direct regulation but also incidental consequences.[58]

On this basis, pretended license fees have been struck down, such as that amounting to one-half the assessed value of the land covered by an arcade required by ordinance of landowners with lots adjoining certain streets,[59] those consisting of a few centavos for every admission ticket in places of amusements,[60] that amounting to ₱24 per apartment each year,[61] inspection fees consisting of a few centavos per head of animal shipped or transported outside the

---

[53] Manila Motor Co. v. City of Manila, 72 Phil. 336, where the Supreme Court held that the power to impose a tax on the business of the taxpayer being clearly granted, it is immaterial how such imposition is called. To the same effect, Uy Matiao & Co. Inc. v. City of Cebu et. al., 49 O.G. 1797; Medina et. al v. City of Baguio, 48 O.G. 4769; Manila Electric Co. v. City of Manila, G.R. No. L-8694, April 28, 1956.

[54] Manila Lighter Trans. Co. Inc. v. Mun. Bd. of Cavite City, et. al., G.R. No. L-6848, April 27, 1956; Mun. of Cotabato v. Sanuos et. al., G.R. No. L-12757, May 29, 1959; Shell v. Vaño, 50 O.G. 1046; Mun. of Victorias v. Victorias Milling Co., 67 Phil. 733.

[55] See cases in fn. 52.

[56] In the following cases, the amounts were deemed reasonable for police purposes: Recreation & Amusement Association of the Philippines v. City of Manila, G.R. No. L-7922, Feb. 22, 1957; Physical Therapy Organization of the Philippines, Inc. v. Mun. Bd. of Manila, G.R. No. L-10448, Aug. 30, 1957; Gavino v. Mun. of Calapan, 71 Phil. 438; City of Manila v. La Granja, Inc, 73 Phil. 585; Rojas & Bros. Inc. v. City of Cavite, G.R. No. L-10730, May 26, 1958.

In the following cases, the amounts were deemed too much for regulatory purposes: Rojas & Bros. v. Cavite City, G.R. No. L-10730, May 26, 1958; Cu Unjieng v. Patstone, 42 Phil. 818; Hercules Lumber Co. v. Mun. of Zamboanga, 55 Phil. 653; Pacific Commercial Co. v. Romualdez et. al., 49 Phil. 917; Smith, Bell & Co., Ltd. v. Mun. of Zamboanga, 55 Phil. 466; City of Iloilo v. O. Villanueva, G.R. No. L-12695, March 23, 1959; Panaligan v. City of Tacloban et. al. G.R. No. L-9319, Sept. 27, 1957. Morcoin v. City of Manila, G.R. No. L-15351, Jan. 28, 1961.

[57] Physical Therapy Organization of the Philippines, Inc. v. Mun. Bd. of Manila, G.R. No. L-10448, Aug. 30, 1957; Cu Unjieng v. Patstone, 42 Phil. 818; Arquiza Luta v. Mun. of Zamboanga, 50 Phil. 748.

[58] Cu Unjieng v. Patstone, 42 Phil. 818. This test was also adverted to in Saldana v. City of Iloilo, G.R. No. L-10470, June 26, 1958; Panaligan v. City of Tacloban, G.R. No. L-9319, Sept. 27, 1957; City of Iloilo v. Villanueva, G.R. No. L-12695, March 23, 1959; Manila Lighter Trans. Co. Inc. v. Cavite City, et. al., G.R. No. L-6848, April 27, 1956; Morcoin v. City of Manila, G.R. No. L-15351, Jan. 28, 1961.

[59] Cu Unjieng v. Patstone, 42 Phil. 818.

[60] Rojas & Bros. v. City of Cavite, G.R. No. L-10730, May 26, 1958; Arong v. Raffinan & Inclino (G.R. No. L-8673) and Young et al. v. Raffinan & Zabate (G.R. No. L-8674), Feb. 18, 1956.

[61] City of Iloilo v. Villanueva, G.R. No. L-12695, March 23, 1959.

municipal corporation,[62] annual fee amounting to ₱400 on marine shops not operated as a business.[63]

It is otherwise with non-useful occupations or enterprises.[64] As to them, a municipal corporation is allowed a wider discretion in respect to the amount of the fee than in regard to license fees for useful occupations, and aside from applying the legal principle that municipal ordinances must not be unreasonable, oppressive, or tyrannical, the courts have generally declined to interfere with such discretion.[65]

On this rule, our courts have sustained license fees in amounts beyond the probable expenses of regulation with respect to such enterprises as deal in the sale of liquor,[66] the practice of hygienic and aesthetic massage[67] and cockpits or cockfights.[68]

In addition, other circumstances have been considered as evidencing the true, as distinguished from the ostensible, purpose of the imposition assailed.[69] A claim in one case that the license fee was imposed for regulatory purposes was denied, where there was no showing of any need for such regulation and such fee appears to have been imposed unnecessarily on an occupation or business not inherently subject to regulation.[70] In another case, the defense that the amounts imposed were imposed for regulatory purposes could not be sustained, for the reason that the enterprises supposed to be licensed were already being licensed under a prior ordinance and were paying annual fees thereunder.[71]

3. *When the power to tax exists:*

Let us proceed to the other usual point of controversy. Assume that under the criteria we have mentioned, the imposition is undoubtedly a tax. The tax question is, is it valid? This in turn is answered by ascertaining whether or not the tax imposed is within the taxing power of the municipal corporation concerned.

To resolve this point, we must look to the words used in the statute. The rule is that where the law recognizes the power to tax, it expressly so provides with the word "tax" or cognate expres-

---

[62] Panaligan et. al. v. City of Tacloban et al., G.R. No. L-9319, Sept. 27, 1957; Saldana v. City of Iloilo, G.R. No. L-10470, June 26, 1958.

[63] Manila Lighter Trans. Co., Inc. v. Mun. Bd. of Cavite City, et. al., G.R. No. L-6848, April 1956.

[64] See cases in fn. 57.

[65] Cu Unjieng v. Patstore, 42 Phil. 818.

[66] Arquiza Luta v. Mun. of Zamboanga, 50 Phil. 743.

[67] Physical Therapy Organization of the Philippines, Inc. v. Mun. Bd. of Manila, G.R. No. L-10448, Aug. 30, 1957.

[68] Carino v. Jamoralne, 56 Phil. 188.

[69] Panaligan et. al. v. City of Tacloban et. al., G.R. No. L-9319, Sept. 27, 1957; Arong v. Raffinan & inclino (G.R. No. L-8673) and Young et. al. v. Raffinan & Zabate (G.R. No. L-8674), Feb. 18, 1956.

[70] Panaligan et. al. v. City of Tacloban et al., G.R. No. L-9319, Sept. 27, 1957.

[71] Arong v. Raffinan & Inclino (G.R. No. L-8673) and Young et. al. v. Raffinan & Zabate (G.R. No. L-8674). Feb. 18, 1956.

sion.[72] In that case, all subjects or classes of subjects to which such words refer are within the taxing power of the municipal corporation concerned.

However, where the statute employs merely such words or phrases as "to regulate," "to fix the license fees," [73] "to regulate and fix the amount of license fees," [74] or "license," [75] no taxing power is deemed provided with respect to the subject matter with which such expressions are used. Accordingly, it has been held that where the word "tax" occurs in certain subsections of a section in the charter of Manila and does not occur in the other subsections of the same section, no taxing power can be said to exist with reference to the subjects mentioned in the latter subsections.[76]

This does not mean that in the absence of the word "tax" and cognate expressions, no impositions for revenue can be made at all. It has been suggested that the terms "license" and "regulate" in a municipal charter may authorize licenses for the purpose of raising revenue if there be nothing antagonistic in the rest of the charter.[77] This is particularly the case where regulatory power is conferred with respect to non-useful occupations or enterprises.[78] In other cases, such revenue may be derived as may be incidental to the regulation authorized.[79]

4. *Subjects of taxation:*

What subjects are within municipal taxing power is likewise determined on the face of the statute. This used to be an easy matter under the earlier laws, when the legislature undertook an enumeration of those subjects which it had intended to subject to the municipal taxing power.[80] But when the authority ceased to

---

[72] *Ibid.*

The settled rule is that the taxing power is not to be implied from a grant of police power. Rojas & Bros. v. City of Cavite, G.R. No. L-10730, May 26, 1958; Cu Unjieng v. Patstone, 42 Phil. 818; Pacific Commercial Co. v. Romualdez et. al., 49 Phil. 917;

And a grant of the taxing power must be clear and express. We Wa Yu v. City of Lipa, G.R. No. L-9167, Sept. 27, 1956; Saldana v. City of Iloilo, G.R. No. L-10470, June 26, 1958; Melina et. al. v. City of Baguio, 48 O.G. 4769; Icard v. City of Baguio, 46 O.G. Supp. 11, 320.

[73] Arong v. Raffinan & Inclino (G.R. No. L-8673) and Young et. al. v. Raffinan & Zabate (G.R. No. L-8674), Feb. 18, 1956; Icard v. City of Baguio, 46 O.G. Supp. 11, 320.

[74] Rojas & Bros. v. Cavite City, G.R. No. L-10730, May 26, 1958; Arong v. Raffinan & Inclino (G.R. No. L-8673) and Young et. al. v. Raffinan & Zabate (G.R. No. L-8674), Feb. 18, 1956; Pacific Commercial Co. v. Romualdez et. al., 49 Phil. 917.

Under certain conditions, a distinction might obtain between municipal authority "to license and regulate" and municipal authority "to regulate and fix the amount of the license fees", as where it was shown to be the purpose of the legislature to confer, along with the discretion as to the amount of fees, a grant of the taxing power. Pacific Commercial Co. v. Romualdez et. al., 49 Phil. 917.

[75] City of Iloilo v. Villanueva, G.R. No. L-12695, March 28, 1959.

[76] Pacific Commercial Co. v. Romualdez et. al., 49 Phil. 917.

[77] *Ibid.*

[78] See cases in fn. 57.

Much discretion is given to municipal corporations in determining the amount of fees to be paid by non-useful occupations, pursuant to an exercise of police or regulatory power. Physical Therapy Organization of the Philippines, Inc. v. Mun. Bd. of Manila, G.R. No. L-10448, Aug. 30, 1957.

[79] Pacific Commercial Co. v. Romualdez et. al., 49 Phil. 917.

[80] For examples, see city charters and Act No. 82, secs. 40 and 43 and the Rev. Adm.

refer to specific objects and became general, the ascertainment of subjects within the taxing power became a somewhat uncertain operation.[81]

This is particularly true under the Local Autonomy Act, which expressly preserves to the various municipal corporations any power they were enjoying at the time of its enactment,[82] although it also repealed or modified all prior laws to the extent that these were inconsistent with its provisions.[83] Particular subjects are, of course, mentioned, such as "occupation," "business," "privileges" and "gasoline."[84] But the all-embracing power to "levy for public purposes, just and uniform taxes, licenses or fees" is conferred without reference to any particular class of subjects and may therefore embrace every object or enterprise within the jurisdiction of the municipal corporation, save for the stated exceptions.[85]

If this be correct, it remains an open question whether the provisions of the various charters prescribing specific subjects for taxation by the city concerned [86] as well as the provisions of the Revised Administrative Code listing particular enterprises or articles as subjects of regulation,[87] continue to be in force.

In this connection, one problem with which our courts had to wrestle very often is whether a particular class of articles or enterprises fall within subjects conceded to be within municipal taxing power. Generally, they have adhered to a rule of reasonable interpretation. Where the article or business taxed belongs to the generic group or class subject to the taxing power, they have inclined to sustain the impositions.[88] Many articles have been held to be within the taxable categories listed in the statute. Musical instruments were classifiable and taxable as "new (not yet used) merchandise";[89] cinematographs as "theaters";[90] panciterias as "restaurants";[91] amusement places as "business";[92] inflammable gas as

---

Code, sections 2307-2308.

[82] Act No. 3422, Sec. 1; C.A. No. 472, Sec. 1; R.A. No. 2264, Sec. 2.

[83] Sec. 10, R.A. No. 2264.

[84] Sec. 9, R.A. No. 2264.

[85] Sec. 2, R.A. No. 2264.

[86] *Ibid.*

[87] See fn. 16.

[88] Secs. 2243-2244, 2625, R.A.C. Shell v. Vano, 50 O.G. 1046 is suggestive. But see Smith, Bell Co. Ltd. v. Mun. of Zamboanga, 55 Phil. 466.

[89] Eastern Theatrical et. al. v. Alfonso, et al., G.R. No. L-1104, May 31, 1949; Manila Lighter Trans. Inc. v. Mun. Bd. of Cavite City et. al., G.R. No. L-6848, April 27, 1956; Manila Tobacco Association v. City of Manila, G.R. No. L-9549, Dec. 21, 1957; City of Manila v. Lyric Music House, Inc., 62 Phil. 125; Linan v. Mun. Council and Mun. Treas. of Daet, 44 Phil. 792; Yap Tak Wing & Co., Inc. v. Mun. Board of Manila et al., 68 Phil. 511; City of Manila v. Inter-Island Gas Service, Inc., G.R. No. L-8799, Aug. 31, 1956.

The distinction made by plaintiffs as to the power to tax business and the power to tax amusements has no ground under the applicable provisions of law. The tax therein authorized cannot be defined as a tax on business and cannot be restricted to a smaller scope than what is authorized by the words used, so as to exclude what plaintiffs regard as a tax on amusement. Eastern Theatrical Co., Inc. v. Alfonso et al., O.G. Supp. 11, 303.

[90] City of Manila v. Lyric Music House, Inc., 62 Phil. 125.

[91] Linan v. Mun. Council and Mun. Treas. of Daet, 44 Phil. 792.

[92] Yap Tak Wing & Co., Inc. v. Mun. Bd. of Manila et. al., 68 Phil. 511.

[93] City of Manila v. Inter-Island Gas Service, Inc., G.R. No. L-8799, Aug. 31, 1956.

"merchandise";[93] marine shops as "shipyards";[94] tobacco products as "merchandise";[95] and copra as "oil."[96]

5. *Kind of taxes:*

Another aspect of the scope of municipal taxing power is the kind of taxes which our municipal corporations are authorized to impose. Most familiar to us are the license or excise taxes.[97] These are usually imposed upon the privilege of carrying on a business or other enterprise or of pursuing a trade or occupation within the territorial limits of the municipal corporation.[98]

Formerly, the municipal taxing authority was confined to such kind of taxes, but this is no longer so.[99] Under the Local Autonomy Act, any kind of tax may be imposed, save the stated exceptions, which it must be admitted however, to cover most of the known species of taxation. It may very well be the case then that despite statutory changes, municipal taxation remains confined chiefly to business, occupation or privilege taxes. To these must be added certain other taxes, although these are imposable only exceptionally, including the property tax on motor vehicles,[100] amusement taxes,[101] and taxes on gasoline.[102]

6. *Amount or rate of tax:*

As to the amount or rate of tax imposable, the rule used to be that such lay within the sound discretion of the municipal corporation concerned.[103] As stated in one case, where under undoubted charter power, the tax imposed is for revenue alone, or for police regulation and revenue, the amount is usually a matter for municipal determination.[104] Our courts have declined to interfere on the ground that the amount is oppressive, or unreasonably large, or grossly disproportionate to the services rendered.[105]

---

[93] Eastern Theatrical Co., Inc. v. Alfonso et al., 46 O.G., Supp. 11, 303.

[94] Manila Lighter Trans. Co., Inc. v. Mun. Bd. of Cavite City, et. al., G.R. No. L-6848, April 27, 1956.

[95] Manila Tobacco Association v. City of Manila, G.R. No. L-9549, Dec. 21, 1957.

[96] Uy Matiao & Co., Inc. v. City of Cebu et. al., 49 O.G. 1797.

[97] A license or excise tax is one imposed upon the performance of an act, enjoyment of a privilege, or the engaging in an occupation or carrying on a trade or business. Association of Customs Brokers and Manlapit v. Mun. Bd., Treas., Assessor and Mayor of Manila, G.R. No. L-4376, May 22,. 1953.

[98] This appears patent on the face of the city charters as well as on that of Act No. 82, Rev. Adm. Code, Act No. 3422, C.A. No. 472 and R.A. No. 2264, where the taxable subjects listed are generally trades, occupations or business enterprises.

[99] Under Act No. 3422, just and uniform taxes for local public purposes was already authorized.

[100] Sec. 70(b), Act No. 3992, as amended.

[101] Sec. 2, Local Autonomy Act, which vests general taxing power on cities, municipalities and municipal districts, and which controls any other provision of law to the contrary notwithstanding, does not except amusement taxes as among the forbidden Impositions.

[102] R.A. No. 1435.

[103] City of Manila v. Lyric Music House, Inc., 62 Phil. 125; Carino v. Jamoralne, 56 Phil. 188; Arquiza Luta v. Mun. of Zamboanga, 50 Phil. 748; Pap Tak Wing & Co., Inc. v. Mun. Bd. of Manila, 68 Phil. 511.

[104] City of Manila v. Lyric Music House, Inc., 62 Phil. 125.

[105] Manila Electric Company v. City of Manila, G.R. No. L-8594, April 28, 1956; Manila

It is at best doubtful, however, whether such rulings are still good law. Under the Local Autonomy Act, the effectivity of a tax or fee levied thereunder may be suspended on the ground that it is "unjust, excessive, oppressive, or confiscatory." [106] The municipal corporation making the imposition may appeal such suspension, but it is not clear whether the tax or fee is voided or invalidated in case the suspension is sustained.[107]

7. *Assessment, graduation, classification:*

Where the power to tax is undisputed, the municipal corporation has the incidental authority to determine the basis of assessment, to make reasonable classifications and to graduate the taxes imposed accordingly.

As a rule, our courts have sustained the manner or method in which municipal taxes are imposed. Thus, in the face of taxpayer protests, taxes or license fees have been upheld although levied on the basis of weight,[108] or quarterly gross sales,[109] or number of hectares per fishpond,[110] or annual gross sales,[111] or every ticket sold,[112] or value of the privilege conferred,[113] or value of the fishing equipment,[114] or number of horses per stable,[115] or maximum capacity of tin can factories,[116] or the volume of business and the number of persons who may be accommodated in the establishment.[117]

As for the power to classify, it is usually held that the discretion to tax a specified class or group implies a discretion to discricriminate between the sub-classes or sub-groups into which the same is divisible, provided the basis of the classification is reasonable.[118] In such a case, there is no violation of the rule prescribing uniformity, since such uniformity refers to equal treatment of all members of a class established according to a reasonable standard.[119] Classifica-

---

Motor Co. v. City of Manila, 72 Phil. 336; Carino v Jamoralne, 56 Phil. 188; Arquiza Luta v Mun. of Zamboanga, 50 Phil. 748; Mun. of Cotabato v. Santos, G.R. No. L-12757, May 29, 1959. Shell v. Vaño, 50 O.G. 1046; Medina, et. al. v. City of Baguio 48 O.G. 4769.

[106] Par. 2, Sec. 2, R.A. No. 2264. Note also suggestive language in Syjuco v. Parañaque et. al., G.R. No. L-11265, Nov. 27, 1959.

[107] Par. 5, Sec. 2, R.A. No. 2264.

[108] Uy Matiao & Co., Inc. v. City of Cebu et. al., 49 O.G. 1797

[109] City of Manila v. Inter-Island Gas Service, G.R. No. L-8[illegible], Aug. 31, 1956.

[110] People v. Mendaros et al., G.R. No. L-6975, May 27, 1955; Mun. of Cotabato v. Santos et. al., G.R. No. L-12757, May 29, 1959.

[111] Syjuco, Inc. v. Paranaque et al., G.R. No. L-11265, Nov. 27, 1959.

[112] City of Baguio v. de la Rosa, G.R. Nos. L-8268, L-8269, L-8270, Oct. 24, 1955; Eastern Theatrical, Inc. v. Alfonso et. al., 46 O.G., Supp. 11, 303.

[113] Syjuco, Inc. v. Paranaque et. al., G.R. No. L-11265, November 27, 1959: U.S. v. Sumulong, 30 Phil. 381

[114] U.S. v. Sumulong, 30 Phil. 381.

[115] Manila Race Horses Trainers Association & Sordan v. de la Fuente, G.R. No. L-2947, Jan. 11, 1951.

[116] Standard Vacuum Oil Co. v. Antigua et. al., G.R. No. L-6931, April 30, 1955. Also Shell v. Vaño, 50 O.G. 1046.

[117] Yap Tak Wing & Co., Inc. v. Mun. Board of Manila et. al., 68 Phil. 511.

[118] Uy Matiao & Co., Inc. v. City of Cebu et. al., 49 O.G. 1797; U.S. v. Sumulong, 30 Phil. 381; Syjuco, Inc. v. Paranaque et. al., G.R. No. L-11265, Nov. 27, 1959.

[119] Eastern Theatrical, Inc. v. Alfonso et. al., 46 O.G., Supp. 11, 303; Uy Matiao & Co., v. City of Cebu et. al., 49 O.G. 1797; Manila Race Horse Trainers Association of the Philippines & Sordan v. de la Fuente, G.R. No. L-2947, Jan. 11, 1951; City of Manila v. Lyric Music House,

tion has been held reasonable on the basis of the purpose of the horses kept in the stables,[120] the volume of business,[121] sales for a fixed period,[122] the number of hectares of fishponds held,[123] the selling price of admission tickets,[124] and the value of the privilege conferred.[125]

In certain cases, the purpose of the classification is to ascertain which class or classes of a given business subject to municipal tax should bear the burden of the tax and which should be exempt.[126] A good example is an ordinance classifying stables within the city of Manila into those which are used for race horses and those which are not, and imposing municipal taxes only on stables in which race horses are kept.[127] As a rule, however, the aim of classification is the graduation of the tax imposed by prescribing varying rates for the different classes.[128] The basis of such classification is ability to pay, determined according to the volume of the business, gross sales for a fixed period, size of fishpond holdings, price of the tickets sold, standard weight of the product or value of the fishing equipment involved.

8. *Penalties:*

Finally, in order to assure an effective municipal taxing power, there is the incidental authority to fix and impose penalties for failure to pay municipal taxes or pay such seasonably.[129] The rule on this point is that in the absence of constitutional or statutory inhibition, the authority to impose reasonable fines and penalties for the failure to pay a license tax is regarded as a necessary incident

---

Inc., 62 Phil. 125; U.S. v. Sumulong, 30 Phil. 381.

Uniformity in taxation means that all taxable articles or kinds of property, of the same class, shall be taxed at the same rate. It does not mean that lands, chattels, securities, incomes, occupations, franchises, privileges, necessities, and luxuries, shall all be assessed at the same rate. Different articles may be taxed at different amounts, provided the rate is uniform on the same class everywhere, with all people, and at all times (Black on Const. Law at p. 292, quoted in Churchill and Tait v. Concepcion, 34 Phil. 969). City of Manila v. Lyric Music House, Inc., 62 Phil. 125.

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

[121] Yap Tak Wing & Co., Inc. v. Mun. Bd. of Manila, 68 Phil 511.

[122] Li Seng Giap et al. v. Mun. of Daet et al., 54 Phil. 625; Syjuco, Inc. v. Parañaque et al., G.R No. L-11265, Nov. 27, 1959; City of Manila v. Inter-Island Bas Service, G R. No. L-8799, Aug. 31, 1956; Santos v. Aquino, 49 O.G. 5344.

[123] People v. Mendaros et al., G.R. No. L-6975, May 27, 1955.

[124] City of Baguio v. de la Rosa, G.R. No. L-8268-70, Oct. 24, 1955; Eastern Theatrical, Inc. v. Alfonso et al., 46 O.G., Supp 11, 303.

[125] U.S. v. Sumulong, 30 Phil. 381; Syjuco, Inc. v. Parañaque, et al., G.R. No. L-11265, Nov. 27, 1959.

[126] Eastern Theatrical, Inc. v. Alfonso, et al., 46 O.G., Supp. 11, 303; Manila Race Horse Trainers Association & Sordan v. de la Fuente, G.R. No. L-2947, Jan. 11, 1951.

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

[128] Uy Matiao & Co., Inc. v. City of Cebu et al., 49 O.G. 1797; Standard Vacuum Oil Co. v. Antigua et al., G.R. No. L-6931, April 30, 1955; U.S. v. Sumulong, 30 Phil. 381; Yap Tak Wing & Co., Inc. v. Mun. Bd. of Manila, 68 Phil. 511; Syjuco, Inc. v. Paranaque, et al., G.R. No. L-11265, Nov. 27, 1959; City of Manila v. Inter-Island Gas Service, G.B. No. L-8799, Aug. 31, 1956; City of Baguio v. de la Rosa, G.R. No. L-8268-70, Oct. 24, 1955; Eastern Theatrical, Inc. v. Alfonso et al., 46 O.G., Supp. 11, 303; Santos v. Aquino, 49 O.G. 5344; Medina et al. v. City of Baguio, 48 O.G. 4769.

[129] Punsalan v. Mun. Board of Manila, 50 O.G. 2485; U.S. v Rodriguez, 38 Phil. 769; U.S. v. Sumulong, 30 Phil. 381; People v. Carreon, 65 Phil. 588; People v. Mendaros et al., G.R. No. L-6975, May 27, 1955; People v. Greenfield, 63 Phil. 367.

to the power to levy such tax.[130] In addition, surcharges may be imposed by ordinance for late payment.[131]

In practice, however, the fines and penalties imposed in taxing ordinances have their basis in statutory provisions explicitly authorizing the imposition of specified penalties for breach or violation of existing ordinances.[132] In fact, there is authority for the view that where there are such statutory provisions, they control the municipal power to impose penalties.[133] It has been held that where by statute the maximum penalty that can be imposed by municipal ordinance is a fine of ₱200, a tax ordinance prescribing a penalty exceeding that amount is null and void.[134] But the invalidity of such provision does not have the effect of annulling the rest of the taxing ordinance, which remains in full force and effect.[135]

9. *Double taxation:*

The question has sometimes been raised on whether an undoubted power to tax can be exercised by a municipal corporation, with respect to articles or enterprises already taxed by the central government.[136] In the absence of an explicit statutory prohibition, the rule is that in such a case, the imposition of taxes by the municipal corporation is valid.[137]

Our courts have sustained a municipal tax on movie theaters, assessed on the basis of the price of the ticket sold, despite an existing amusement tax on such theaters under the internal revenue code, which is similarly assessed.[138] It has also been held that the power of the City of Manila to tax and regulate steam boilers under undisputed charter authority was not excluded by the regulatory power given the Secretary of Labor over steam boilers, on the principle that a municipal regulation or prohibition of a certain line of activity may co-exist with national regulation or prohibition of said activity.[139]

In such cases, the plea frequently set by taxpayers of double taxation has been unavailing, since our courts have construed this principle as not contemplating concurrent taxation of the same thing or business by different units of the Government, as by the central

---

[130] U.S. v. Rodriguez, 38 Phil. 759.
[131] City of Manila v. Pacific Commercial Co., 60 Phil. 813; Santos v. Aquino, 49 O.G. 5344; Mun. of Cotabato v. Santos, G.R. No. L-12757, May 29, 1959.
[132] Such provision is found in all the city charters, as well as statutes governing municipalities and municipal districts, such as Act No. 82 and the Rev. Adm. Code.
[133] McQUILLEN, MUNICIPAL CORPORATIONS, 3rd. ed., Vol. 16, p. 341.
[134] U.S. v. Rodrguez, 38 Phil. 759.
[135] *Ibid.*
[136] Eastern Theatrical, Inc. v. Alfonso et al., 46 O.G., Supp. 11, 303; Punsalan et al. v. Mun. Bd of Manila, 50 O.G. 2485; Shell v. Vano, 50 O.G. 1946.
[137] *Ibid.*
[138] Eastern Theatrical, Inc. v. Alfonso et al., 46 O.G. Supp. 11, 303.
[139] Manila Electric Co. v. City of Manila, G.G. No. L-8694, April 28, 1956.

government and by a municipal corporation having authority to impose such tax.[140]

IV. LIMITATIONS ON THE TAXING POWER:

Whether viewed as purely delegated or merely regulated, municipal power to tax is likewise subject to many limitations. These are chiefly statutory, but a few are inherent or else derived from the Constitution.

1. *Inherent limitations:*

The laws in force make up the true measure of municipal taxing power, for as we have said, the exercise of the power is fully under legislative control. This has the effect of limiting the reach of such taxing authority to what the laws permit, since law from its very nature carries a grant of power as well as a limitation thereof. In the language of our Supreme Court, subordinate entities like councils can exercise the power of taxation only to the extent specified by law; and this power cannot be extended by strained implications.[141]

(a) *Law as measure of the power:*

Under many of the earlier statutes, particularly in the city charters, seemingly broad powers to impose taxes were provided.[142] But such general grants were actually meaningless, since they were to be exercised in accordance with law. The rule covering this case is that where the authority to tax is given in general terms and subject to the qualification that the authority is to be exercised as

---

[140] Manila Motor Company v. City of Manila, 72 Phil. 336.

In the following cases, the plea of double taxation was rejected: Manila Motor Co. v. City of Manila, 72 Phil. 336; Punsalan et al. v. Mun. Bd. of Manila, 50 O.G. 2485; Syjuco, Inc. v. Parañaque, et al., G.R. No. L-11265, Nov. 27, 1959; City of Manila v. Inter-Island Gas Service, G.R. No. L-8799, Aug. 31, 1956; Eastern Theatrical, Inc. v. Alfonso et al., 46 O.G., Supp. 11, 303; Shell v. Vano, 50 O.G. 1946.

Double taxation in the sense that such is prohibited by the Constitution and is objectionable from the legal viewpoint exists only with reference to double taxation on the same property by the same government or governmental entity, for the same purpose and for the same period of time. It does not contemplate taxation of the same thing or business by different units of the Government, as by the National Government and by a municipal corporation. Manila Motor Co. v. City of Manila, 72 Phil. 336.

There is no double taxation where one is imposed by the state and the other is imposed by the city, it being widely recognized that there is nothing inherently obnoxious in the requirement that license fees or taxes be exacted with respect to the same occupation, calling or activity by both the state and the political divisions thereof. (Citing 1 Cooley on Taxation, 4th Ed., 492; 51 Am. Jur. 341). Punsalan et al. v. Mun. Bd. of Manila, 50 O.G. 2485.

The payment of the occupation tax under the Internal Revenue Code did not exempt the person subject to a tax on "installation managers" authorized by law, although such person was merely a salaried employee, since his job still constituted an occupation or calling. Shell v. Vano, 50 O.G. 1946.

But see Vega & Gellada v. Mun. Bd. of the City of Iloilo, 50 O.G. 2456; City of Manila v. Tanquintic, 58 Phil. 297.

Where the exercise of a privilege is by law subject to certain regulations which are administered by a national agency, the grant of the privilege by the agency in question upon a finding that the statutory requirements have been complied with carries the right to exercise the same without necessity of complying with condition precedents required by a municipal corporation in respect to such privilege, the acts of the latter in that respect being ultra vires. Vega & Gellada v. Mun. Bd. of the City of Iloilo, 50 O.G. 2456.

[141] Hercules Lumber Co. v. Mun. of Zamboanga, 55 Phil. 653; Heras v. City Treas. of Quezon City, G.R. No. L-12565, Oct. 31, 1960.

Among the rules which aid in this delimitation may be mentioned *Expressio unius est exclusio alterius* (Vega & Gellada v. Mun. Board of Iloilo City, 50 O.G. 2456; Santos Lumber Co. et al. v. City of Cebu et al., G.R. No. L-10197, Jan. 22, 1958) and the principle of *ejusdem generis* (City of Manila v. Lyric Music House, Inc., 62 Phil. 125).

[142] Rojas & Bros. v. Cavite City, G.R. No. L-10730, May 26, 1958; Manila Lighter Trans. Inc. v. Mun. Bd. of Cavite City, G.R. No. L-6848, April 27, 1956; Medina et al. v. City of Baguio, 48 O.G. 4769; Icard v. City of Baguio, 46 O.G. Supp. 11, 320.

provided by law, one must look elsewhere in the statute book for specific subjects of taxation, that is to say, for subjects specifically authorized by law to be taxed.[143]

Such inherent limitation of municipal taxing power, consisting of its being confined to what the law authorizes, is enforced with the aid of settled rules on statutory construction. Any such authority as expressed in the laws is subject to strict interpretation. Any doubt or ambiguity arising out of the terms used in granting such authority must be resolved against the municipal corporation.[144] Congress, as has been noted earlier, has provided in the Local Autonomy Act for a contrary approach;[145] but it is not known whether such legislative prescription is binding on our courts.

The traditional approach of our courts, which is to exclude from the taxing power save what is plainly or necessarily within the terms of statutory authority, is best exemplified in their consistent refusal to recognize the taxation of non-business enterprises or activities under statutory power to tax business on the exercise of privileges. Business taxes imposed pursuant to such authority apply to enterprises carried on as a business but not to those not carried on for profit through direct transactions with customers.[146]

On this ground, a number of activities or enterprises have been held to be exempt from the corresponding privilege tax, including a marine shop which does no work for the public at large,[147] a private market for the use of which no fees at all are charged by the owner,[148] the private garages of a common carrier used for keeping its vehicles when not in use and none other,[149] and sale of Bibles and religious pamphlets without motives of gain.[150]

On the same principle, the authority to subject particular business activities to taxation cannot be extended to other business activities essentially of a different nature. The tax on dealers does not

---

[143] *Ibid.*

[144] Cu Unjieng v. Patstone, 42 Phil. 818; Pacific Commercial Co. v. Romualdez et al., 49 Phil. 917; Batangas Transportation Co. v. Provincial Treas. of Batangas, 52 Phil. 190; Icard v. City of Baguio, 46 O.G. Supp. 11, 320; Medina et al. v. City of Baguio, 48 O.G. 4769; Vega & Gellada v. Mun. Bd. of Iloilo City et al., 50 O.G. 2456; Santos Lumber Co. et al. v. City of Cebu et al., G.R. No. L-10197, Jan. 22, 1958.

[145] Par. 1, Sec. 12, R.A. No. 2264.

[146] Manila Lighter Trans. Inc. v. Mun. of Cavite City, et al., G.R. No. L-6848, April 27, 1956; Standard Vacuum Oil Co. v. Antigua, et al., G.G. No. L-6931, April 30, 1955; People v. Carreon, 65 Phil. 588; Mun. of Victorias v. Victorias Milling Co. Inc., 67 Phil. 733; Vega & Gellada v. Mun. Bd. of Iloilo, 50 O.G. 2456; Hawaiian Philippine Co. v. Mun. of Silay et al., 62 Phil. 961.

The test of whether a particular activity constitutes a business or not depends upon the principal purpose for undertaking it. It is a business if it is carried on for profit or gain, otherwise not. People v. Greenfield, 63 Phil. 367; Linan v. Mun. Council and Mun. Treas. of Daet, 44 Phil. 792.

The position of notary public, being a public office, does not constitute a trade, occupation or business subject to municipal taxation. People v. Carreon, 65 Phil. 588.

[147] Manila Lighter Trans. Inc. v. Mun. Bd. of Cavite City, et al., G R. No. L-6848, April 27, 1956.

[148] Mun. of Victorias v. Victorias Milling Co., Inc., 67 Phil. 733; Hawaiian Philippine Co v. Mun. of Silay et al., 62 Phil. 961.

[149] Batangas Trans. Co. v. Provincial Treas. of Batangas, 52 Phil. 190.

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

apply to manufacturers [151] or a printer,[152] nor that on retailers to wholesalers.[153] A manufacturer, as a rule, may sell or otherwise dispose of its products or goods without being liable as a dealer.[154] This siutation holds, although it maintains an office for receipt of purchase orders as well as payments outside its place of production,[155] or a warehouse in addition to such office in the city, away from its factories in the province.[156] A manufacturer, however, may be liable for the tax on dealers if it has a store, apart or separate from its manufactury or place of production, at which it displays and sells its products as a regular activity.[157] In this connection, warehouses used by a manufacturer cannot be deemed stores, where they are maintained merely for storage purposes and from where deliveries of the goods sold are made.[158]

No dealer's tax may also be imposed on a retail dealer, with respect to sale of paper and office supplies calling for printing jobs, such as the printing of the customer's name and address on stationery. In this case, the principal service rendered is that of printer, not that of retail dealer, since the value of the printing work done is considerably more than that of the material used for the printing. There is also a sale of the paper and the material on which the printing job is done, but this is a mere incident of the service. Accordingly, the nature of the transaction must be determined by the principal purpose, which is that of printing, and not by the incidental sale.[159]

On the question of whether a particular sale of merchandise is wholesale or retail, the test is the use made or to be made by the

---

[151] Palanca v. City of Manila & Trinidad, 41 Phil. 125; Cebu Portland Cement Co. v. City of Manila et al., G.G. No. L-14229, July 26, 1960; City of Manila v. Bugsuk Lumber Co., G.R. No. L-8255, July 11, 1957; Central Azucarrera Don Pedro v. City of Manila & Sarmiento, G.R. No. L-7679, Sept. 29, 1955; Manila Trading & Supply Co. v. City of Manila et al., 56 O.G. 3629.

[152] Manila Press Inc. v. Sarmiento, G.R. No. L-7902, May 11, 1956.

[153] Tan v. de la Fuente & Sarmiento, G.R. No. L-3925; City of Manila v. Manila Remnant Co., Inc., G.R. No. L-9195, Jan. 30, 1957; City of Manila v. Manila Blue Printing Co., 74 Phil. 217.

[154] City of Manila v. Bugsuk Lumber Co., G.R. No. L-8255, July 11, 1957 (sale of lumber by timber concessionaire); Cebu Portland Cement Co. v. City of Manila et al., G.R. No. L-14229, July 26, 1960 (sale of cement manufactured in factory); Central Azucarrera Don Pedro v. City of Manila & Sarmiento, G.R. No. L-7679, Sept. 29, 1955 (sale of sugar from sugar central); Manila Trading & Supply Co. v. City of Manila et al., 56 O.G. 3629 (Cars assembled at manufactury).

[155] City of Manila v. Bugsuk Lumber Co., G.R. No. L-8255, July 11, 1957, where a producer of lumber was held not to be a dealer, although it maintained an office in the city of Manila at which orders for the purchase of lumber were placed and payments therefor were made or which otherwise facilitated the transactions in connection with the sale of lumber produced at its concession outside the city.

[156] Central Azucarrera Don Pedro v. City of Manila & Sarmiento, G.R. No. L-7679, Sept. 29, 1955, where a manufacturer of sugar produced at a sugar central was held not to be a dealer, although it kept an office in the city of Manila in which transactions connected with the sale of sugar, were made, as well as a warehouse in the city from which the sugar purchased and sold were distributed to the buyers; and Cebu Portland Cement Co. v. City of Manila and the City Treas., G.R. No. L-14229, July 26, 1960, where a manufacturer of cement was held not to be a dealer, although it kept a principal office in Manila at which transactions connected with the sale of cement were made and a warehouse from which the cement sold were released and disposed.

[157] See the cases in fn. 151 For a case where a manufacturer was also held a dealer in its products, Manila Tobacco Ass'n v. Manila, *supra*.

[158] Cebu Portland Cement Co. v. City of Manila and the City Treas., G.R. No. L-14229, July 26, 1960.

[159] Manila Press Inc. v. Sarmiento, G.R. No. L-7902, May 11, 1956.

purchaser of such goods or merchandise.[160] If it be for resale at a profit, the goods being unaltered when resold, the quantity of goods sold being large and not to be used by the purchaser or in excess of the requirements of his business, and the merchant selling the goods being habitually engaged in the sale of such goods in large quantities to his customers, then it is to be deemed wholesale; otherwise, it is retail.[161] On the basis of this test, sales to the Government through its Division of Purchase and Supply are retail,[162] as are sales of large quantities of textiles to tailoring establishments.[163]

(b) *Non-taxability of incidental activity:*

A similar limitation, likewise inherent, is the principle well recognized in our jurisdiction that mere incidents of a business already taxed, cannot be made separate objects of municipal taxation.[164] In the language of our Supreme Court, when a person or company is already taxed on its main business, it may not be further taxed for doing something or engaging in an activity which is merely a part of, or incidental to and is necessary to its main business.[165]

In this connection, the manufacture of tin cans has been held incidental to the main business of distributing and selling gasoline and other fuels for which the cans are used as containers.[166] The same relation has been sustained with respect to keeping private garages by a common carrier, where its motor vehicles are kept

---

[160] See the cases in fn. 153.

[161] *Ibid.*

A merchant may be both a retailer and a wholesaler. Tan v. de la Fuente & Sarmiento, G.R. No. L-3925, Dec. 14, 1951, where a dry goods merchant who had paid his wholesaler's license tax was held liable for retailer's license fees, since in addition to his sales to textile firms and individual businessmen for resale, he also made sales to tailors, shirt and pant factories and schools which later sold the textiles in altered form. Also Sy Kiong v. Sarmiento, G.R. No. L-2954, Nov. 29, 1951.

[162] City of Manila v. Manila Blue Printing Co. 74 Phil. 317, where it was held that the government being a consumer of stationary and office supplies sold to it by the company, sales to it, whatever be the quantity, are necessarily retail, not wholesale.

[163] City of Manila v. Manila Remnant Co., Inc., G.R. No. L-9195, Jan. 30, 1957, where it was held that the sales by the taxpayer were retail, having been made to shirt factories and kapok factory which used them in the manufacture of shirts and other goods.

[164] Standard Vacuum Oil Co. v. Antigua et al., G.R. No. L-6931, April 30, 1955; Batangas Trans. v. Prov. Treas. of Batangas et al., 2 Phil. 190; Smith, Bell Co., Ltd. v. Mun. of Zamboanga, 55 Phil. 466; Manila Lighter Trans. Inc. v. Mun. Bd. of Cavite City, G.R. No. L-6848, April 27, 1956; City of Manila v. Fortune Enterprises, Inc., G.R. No. L-14096, July 26, 1960; Ah Nam v. City of Manila, G.R. No. L-15502, Oct. 25, 1960.

See, however, Shell Co. of the Philippines, Ltd. v. Vano, 50 O.G. 1046, where the provision of the Internal Revenue Code was applied to the effect that an activity, otherwise taxable, is not made exempt by being carried on or conducted with a business or activity on which taxes have been paid, with the result that one occupying the position of "installation manager" was subject to a municipal tax levied on such occupation, although his services were rendered as salaried employee in a firm which was paying taxes, national and municipal.

[165] *Ibid.*

Where something is done as a mere incident to, or as a necessary consequence of, the principal business, it is not ordinarily taxed as an independent business in itself. City of Manila v. Fortune Enterprises, Inc., G.R. No. L-14096, July 26, 1960.

Where the ordinance imposes a tax upon the operation of fishponds or fish-breeding lands, on the basis of a fixed amount per hectare, the dikes of the fishponds belonging to the taxpayer are not subject to a distinct assessment, not being independent improvement but integral parts of the fishponds. Mun. of Cotabato v. Santos et al., G.R. No. L-12757, May 29, 1959.

[166] Standard Vacuum Oil Co. v. Antigua et al., G.R. No. L-6931, April 30, 1955, where it was held that although the tax imposed by ordinance is valid, it cannot apply to the manufacture of cans which is not an independent business and for profit, but merely an incident or part of the main business as, which is importation, distribution and sale of gasoline, kerosene and other fuels.

when not in use;[167] the sale of their products by manufacturers of sugar[168] or lumber[169] or motor cars;[170] the maintenance of a marine shop by the owner of a lighterage and water transport business, which is devoted solely to the repair of its own watercraft;[171] the furnishing of auto supplies, battery charging and upholstery remodeling by the owner of an auto repair business;[172] and the sale of empty flour bags, by the owner of a bakery which uses flour contained in such bags.[173]

All these various transactions were treated as tending to better accomplish the principal end in view and merely incidental to the principal purpose of the business, in the absence of circumstances evidencing a different intent. For the purpose of imposing municipal taxes, what is to be taken as essential is the main activity in which the taxpayer is engaged.[174]

(c) *Territorial jurisdiction to tax:*

Another inherent limitation upon municipal power to tax is the requirement of a taxable situs. If the commodity, transaction or enterprise is essentially outside the municipal territory, it is beyond the taxing power of the municipality concerned. Where the statute confines the taxing power to motor vehicles regularly kept in the city, such restriction may not be circumvented by an ordinance clause declaring that motor vehicles used or apt to be used regularly in said city are to be considered as regularly kept therein even though in reality they are kept elsewhere.[175]

In the case of sales, the cases are by no means clear as to the taxable situs. Where a corporation engaged in the wholesale of wines and liquors kept a bodega or warehouse from which wines and liquors sold by the corporation were sent out to provincial buyers, the distribution from said bodega was a "disposal" within the meaning of the Manila Charter, so as to subject said corporation to the wholesale liquor license fees imposed by the city, although orders

---

[167] Batangas Trans. v. Prov. Treas. of Batangas, 52 Phil. 190, where our Supreme Court applying the rule of strict construction of statutory provisions conferring municipal authority, held that while the municipal corporation was authorized to impose a tax on persons engaged in the garage business, where motor vehicles are kept for hire, it had no power to impose a tax on persons engaged in the business of a common carrier, with respect to private garages maintained by it for keeping its motor vehicles when not in use.

[168] Central Azucarrera Don Pedro v. City of Manila & Sarmiento, G.R. No. L-7679, Sept. 29, 1955.

[169] City of Manila v. Bugsuk Lumber C., G.R. No. L-8255, July 11, 1957.

[170] Manila Trading & Supply Co. v. City of Manila et al., 56 O.G. 3829.

[171] Manila Lighter Trans. Inc. v. Mun. Bd. of Cavite City et al., G.R. No. L-6848, April 27, 1956.

[172] City of Manila v. Fortune Enterprises, Inc., G.R. No. L-14096, July 26, 1960.

[173] Ah Nam v. City of Manila G.R. No. L-15502, Oct 25, 1960.

[174] City of Manila v. Fortune Enterprises, Inc., G.R. No. L-14096, July 26, 1960. But see Shell v. Vano, 50 O.G. 1046.

[175] Philippine Transit Association v. Treas. of the City of Manila et al., G.R. No. L-1274, May 27, 1949.

A statement in Mun. of Hinabangan v. Mun. of Wright is suggestive on this point, being to the effect that if the municipality of Wright issued its fishing licenses knowing they covered territory beyong its boundaries, such licenses would be void (G.R. No. L-12603, March 25, 1960).

were placed and the sales effected at its principal office or branch offices outside the city.[176] The taxable situs of the sale had no reference to the place of delivery. But in a recent case, however, our Supreme Court appears to have adhered to a different rule.[177] In this case, the company, which was engaged in the sale of gasoline, maintained a depot within the municipal corporation imposing a tax on gasoline "sold or distributed" within the municipal corporation. Purchase orders were placed either at the depot or at Manila; and deliveries were made, in many cases, to places outside the territorial limits of the municipal corporation. It was held that while there was a taxable situs for sales where deliveries were made within the territory of the municipal corporation, there was none in the case of sales where deliveries were made outside. The place of the delivery was considered the situs of the sale.[178]

2. *Constitutional limitations:*

(a) *Civil liberties:*

The existing constitutional limitations on taxation by the central government apply to municipal taxation. The various civil liberties make up by far the most important category of such limitations. The imposition of any tax or fee to be paid as a condition to their exercise is regarded in the same light as censorship, which our courts have struck down whenever occasion arises.[179] In the leading case in our Islands on this point, the city of Manila sought to apply the license tax paid by retailers who sell books exclusively, to a non-profit organization engaged in the sale of Bibles and religious pamphlets. It was held that such tax could not apply, for it would impair the free exercise and enjoyment of religious profession and worship, as well as the right of dissemination of religious belief.[180]

(b) *Uniformity in taxation:*

By far the constitutional limitation most often invoked is the requirement that taxation shall be uniform.[181] This means, however, not that the same tax should be paid by everyone, but that all taxable articles or kinds of property of the same class shall be taxed

[176] City of Manila v. La Granja, Inc., 73 Phil. 585.

[177] Shell Co. of the Philippines, Ltd. v. Mun. of Sipocot, G.R. No. L-2680, March 20, 1959.

[178] *Ibid.* In justification of its ruling, the Supreme Court interpreted the term "sold" as used in R.A. No. 1435 as having reference to a consummated sale, which includes the element of delivery, and not to a perfected contract merely.

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

[180] *Ibid.*

[181] Par. 1, Sec. 14, Art. VI, Constitution of the Philippines.

Uniformity was, as it still is, a requirement also of statute: Act No. 82 (Sec. 42); Rev. Adm. Code (Sec. 2257); Act 3422; C.A. No. 472 and R.A. No. 2264 (Sec. 2).

at the same rate.[182] The taxing power has incidental authority to make reasonable and natural classifications.[183] A taxable activity or business may be arranged into classes, some of which may be exempted or required to pay different tax rates.[184] The basis of such classification, however, must be reasonable in order that there would be no contravention of constitutional rights.[185] This requirement was deemed satisfied in cases where the ordinance taxed only boarding stables for race horses and left other stables unaffected,[186] or certain places of amusement but not others.[187] So was it in cases where the ordinance imposed varying tax rates on users of fishing privileges depending on the value of the fishing equipment used,[188] on business firms according to their gross sales for a fixed period,[189] on operators of panciterias according to the volume of business and customer capacity of each establishment,[190] on owners of fishponds according to the number of hectares held,[191] on those who store copra according to weight of the contents in the bodega or warehouse,[192] on movie theaters according to the price of the tickets sold.[193] But where classification is unreasonable, the imposition of the tax is invalid as offensive to the uniformity requirement.[194] This has been held to be the case where the basis of classification did not bear a reasonable relation of the ostensible purpose of the taxing ordinance. such as one imposing a tax for repair, maintenance and improvement of city streets which limited, however, the levy to motor vehicles registered in the city, excluding from the purview of the tax motor vehicles not registered but used in the city, which thus contribute

---

[182] See cases in fn. 119.

Equality and uniformity in taxation means that all taxable articles or kinds of property of the same class shall be taxed at the same rate. The taxing power has authority to make reasonable and natural classifications for purposes of taxation; and the appellants cannot point out what places of amusement taxed by the ordinance do not constitute a class by themselves and which can be confused with those not included in the ordinance. Eastern Theatrical et al. v. Alfonso et al., G.R. No.L-1104, May 30, 1949.

[183] Eastern Theatrical et al. v. Alfonso et al., G.R. No. L-1104. May 31, 1949.

[184] See cases in footnotes 126 and 128.

[185] See fn. 118.

[186] Manila Race Horse Trainers Association & Sordan v. de la Fuente, G.R. No. L-2947, Jan. 11, 1951, where it was held that there was no arbitrary classification in the mere fact that the ordinance taxes only boarding stables for race horses and leaves the other stables alone, although there would be discrimination if some boarding stables of the same class used for the same number of horses were not taxed or were made to pay less or more than the others.

[187] Eastern Theatrical et al. v. Alfonso et al., G.R. No. L-1104, May 31, 1949, where it was held that the fact that some places of amusement were not taxed while the others such as cinematographs, theaters, vaudeville companies, theatrical shows, and boxing exhibitions, are taxed, was no argument at all against the equality or uniformity of the imposition.

[188] U.S. v. Sumulong, 30 Phil. 381.

[189] Syjuco Inc. v. Paranaque et al., G.R. No. L-11265. Nov. 27, 1959; City of Manila v. Inter-Island Gas Service, G.R. No. L-8799, Aug. 31, 1956; Medina et al. v. City of Baguio, 48 O.G. 4769; Santos v. Aquino, 49 O.G. 5344.

[190] Yap Tak Wing v. Mun. Bd. of Manila, 68 Phil. 511.

[191] People v. Mendaros et al., G.R. No.L-6975, May 27, 1955. Similarly, a tax may be imposed on the operation of fish-breeding lands or fishponds, on the basis of a fixed amount per hectare held. Mun. of Cotabato v. Santos et al., G.R. No. L-12757, May 29, 1959.

[192] Uy Matiao & Co. Inc. v. City of Cebu et al., 49 O.G. 1797.

[193] Eastern Theatrical v. Alfonso et al., 46 O.G. Supp. 11, 302.

For imposition on theaters on a different basis, see Santos v. Aquino, 49 O.G. 5344 and Medina et al. v. City of Baguio et al., 48 O.G. 4769.

[194] Association of Customs Brokers & Manlapit v. Mun. Board, Treas., Assessor & Mayor of Manila, G.R. No. L-4376, May 22, 1953; Philippine Motor Association et al. v. City Assessor of Manila et al, G.R. No. L-4442, May 22, 1953.

to the deterioration of the streets as much as the registered vehicles.[195] Similarly, the classification was held unreasonable where an activity not subject to municipal taxation was made the basis for the imposition of higher rates. It was observed that where the legislature has clearly withheld the power to impose license taxes upon persons engaged in a particular activity, such as the act of selling jewelry, the act of engaging in this activity cannot be used as a criterion for establishing a class which shall be subject to a higher tax than that imposed generally upon persons engaged in the taxable activity.[196] On such grounds, an ordinance imposing a higher tax on pawnbrokers who also sell jewelry than that on pawnbrokers who do not, was invalid for lack of reasonable basis of classification.

(c) *Public purpose:*

The next important constitutional limitation is the requirement of public purpose.[197] This was held existing in the case of a city ordinance imposing a tax, which in its title referred to activities for the improvement of the city and in its body provided that the tax proceeds should go to the general fund of the city.[198] The raising of revenue for the benefit of the city is a public purpose satisfying constitutional requisites. While the ordinance carried a designation of the civic and charitable institutions which will utilize the funds, such is merely incidental and could not affect the main objective of said ordinance.[199]

(d) *Due process and equal protection:*

The constitutional requirements of equal protection of the laws and due process have likewise been invoked by municipal taxpayers

[195] *Ibid.*
"It does not therefore apply to motor vehicles which are registered elsewhere but which come to Manila for a temporary stay or for short errands, and which contribute in no small degree to the deterioration of the streets and public highways. The fact that they are benefited by their use they should also be made to share the corresponding burden. And yet, such is not the case. This is an inequality which we find in the ordinance, and which renders it offensive to the Constitution." Association of Customs Brokers & Manlapit v. Mun. Bd. et al, G.R. No. L-4376, May 22, 1953
Compare the above reasoning in the case of Philippine Transit Association v. Treas. of the City of Manila et al., G.R. No. L-1274, May 27, 1949. The ordinance involved in this earlier case sought to impose a property tax not only upon vehicles registered in Manila but also upon those which make occasional use of the city streets, being registered and regularly kept elsewhere. This imposition, however, was invalidated by the Supreme Court on the ground that the statute confined the authority of the city to a property tax only on motor vehicles regularly kept in the city. Accordingly, the position of the Supreme Court is that with the ordinance in the *Philippine Transit Association* case, the city went too far in taxing transient vehicles, while in the *Association of Customs Brokers* case, the city did not go far enough by failing to extend the imposition to transient vehicles.
[196] Yeo Loby et al. v. Mun. of Zamboanga, 55 Phil. 656. Under the power the tax pawnbrokers, it was competent for a municipal council to discriminate between pawnbrokers of different sorts, but the criterion for such discrimination, or division of pawnbrokers into classes, must be reasonable. This cannot be said of the classification adopted here, for it violates the rule requiring uniformity in taxation, in this, that same persons engaged in selling jewelry are taxed while others are not. (*Ibid.*)
[197] SINCO, V. G., PHILIPPINE POLITICAL LAW, 10th Ed. (Community Publishers, Manila, 1954), p. 579 et seq.
This requirement has usually been embodied in statutes affecting municipal taxation: Act No. 82 (Sec. 43); Rev. Adm. Code (Secs. 2288, 2628); Act No. 3422; C.A. No. 472; R.A. No. 2264 (Sec. 2).
[198] City of Baguio v. de la Rosa et al., G.R. No. L-8268, Oct. 24, 1955.
[199] *Ibid.*

but without success. There was no infringement of either principle through the imposition of varying tax rates on panciterias and other eating places classified according to volume of business and customer capacity for each establishment.[200] Nor is due process violated where the amount of the tax is based, not on the value of the copra, but on its weight in terms of kilos.[201] And where the power to tax is unquestioned, the complaint of the taxpayer was not heeded that the fees charged by the city were excessive, unreasonable and grossly disproportionate to the services rendered.[202] This latter ruling, however, may not be applicable now, in view of certain statutory requirements in the Local Autonomy Act.[203]

b. *Statutory limitation:*

Municipal power to tax is restricted by provisions of statute in two ways. One is by specifying its area of operation, impliedly excluding everything not mentioned; and the other, by providing for explicit restrictions and prohibitions. As we have already given ample treatment to the first method in an earlier topic, we shall now confine the discussion below to the second, that is, the method of express limitations.

(a) *Exemptions:*

A persistent object of statutory provisions has been the exclusion of commodities or enterprises otherwise taxable from municipal competence to tax. There was no need for this formerly, when municipal taxation was confined only to specified subjects, since the authority to tax anything else did not exist. But as soon as the power to tax assumed a general form, the necessity for specific exclusions arose, since every article or enterprise was subject to tax unless it was protected by some exemption. We have pointed out earlier that this happened in 1928, when Act No. 3422 was enacted. Since then, the exemption of certain classes of property or business activity has been an important function of statutory limitations. As we have said before, this made up a list which was altogether too long.[204] We have managed to cut down the grantees of exemption privileges, but those remaining still make up a formidable

---

[200] Yap Tak Wing & Co. Inc. v. Mun. Bd. of Manila, 68 Phil. 511.

[201] Uy Matiao & Co. Inc. v. City of Cebu, 49 O.G. 1797.

[202] Physical Therapy Organization of the Philippines, Inc. v. Mun. Bd. of Manila, G.R. No. L-10448, Aug. 30, 1957; Manila Electric Co. v. City of Manila, G.R. No. L-8694, April 28, 1956; City of Manila v. Lyric Music House, Inc., 62 Phil. 125; Arquiza Luta v. Mun. of Zamboanga, 50 Phil. 748; Syjuco et al. v. Parañaque et al., G.R. No. L-11265, Nov. 27, 1959.

Where the power to tax is undisputed, the imposition cannot be assailed as excessive, arbitrary or oppressive merely because it has been named or designated as license fees. Manila Motor Co. v. City of Manila, 72 Phil. 336; Shell v. Vano, 50 O.G. 1046; Medina et al. v. City of Baguio, 48 O.G. 4769.

[203] Par. 2, Sec. 2, R.A. No. 2264.

[204] Act No. 3422 enumerated the exceptions from *a* to *t*, which were retained in C.A. No. 472.

group, consisting as they do chiefly of highly capitalized ventures and concerns.[205]

Articles and enterprises presently enjoying exemptions from municipal taxation are listed in the various charters for the cities,[206] in the Local Autonomy Act for the cities, municipalities and municipal districts,[207] as well as in special legislation conferring the privilege in favor of certain commodities or activities.[208] As a rule, our courts do not regard exemptions with favor.[209] But where grant is clear, it is sustained from municipal invasions.[210]

(b) *Forbidden impositions:*

Another important point of statutory restrictions pertain to the kind of taxes a municipal corporation may impose and those which it may not. As a rule, municipal corporations are authorized to impose excise or license taxes on business or occupations but not other kinds except only exceptionally.[211] There are explicit provisions withdrawing various kinds of taxes from municipal authority, generally those imposed by the national government under the national internal revenue code. Among these are the gift tax, estate and inheritance tax, income tax, documentary stamp tax and residence tax.[212]

As to the remaining kinds of taxes, certain classes of municipal corporations are less favored. Municipalities and municipal districts are forbidden to impose percentage taxes on sales or other taxes on any form based thereon, as well as any tax on articles al-

---

[205] Sec. 2, R.A. No. 2264 lists the exceptions from *a* to *k*.

[206] See fn. 16 for the city charters.

[207] Sec. 2, R.A. No. 2264.

[208] Act No. 3992, as amended; R.A. No. 35, as amended by R.A. No. 901; R.A. No. 722; Act No. 4130; R.A. No. 574; R.A. No. 1166; R.A. No. 566; R.A. No. 360; Act No. 1285; R.A. No. 265

[209] City of Manila v. Lyric Music House, Inc., 62 Phil 125. Where our Supreme Court stated:

"It cannot be presumed that the Legislature, without any apparent reason, deliberately exempted from taxation musical merchandise and all other merchandise not specifically mentioned in that paragraph. This would be rank discrimination. Such an exemption from taxation might be excused if done to aid or encourage a new and struggling industry which the Government wishes to foster for the good of the country. A dealer in musical merchandise certainly does not need such aid or encouragement in the Philippines where not only every town, no matter how small, but practically every barrio has a hand or orchestra or both."

[210] Manila Trading Supply Co. v. City of Manila (property owned by the Government or its political subdivisions); Batangas Trans. v. Prov. Treas. of Batangas, 52 Phil. 190 (exemption of common carriers under Act No. 3422); Nieto v. Laggui, 69 Phil. 96 (persons operating electric franchises) but see Shell v. Vano, 50 O.G. 1046; Visayan Electric Co., S.A. v. City of Dumaguete et al., G.R. No. L-10787, Dec. 17, 1957 (exemption under franchise granted by legislature).

[211] The city charters contemplate usually excise or license taxes, chiefly listing as taxable subjects various trades, occupations or the exercise of privileges in the municipality.

In the general statutes regulating municipal taxation, such are the taxes contemplated (Secs. 2307, 2629(c), 2625(d)); Rev. Adm. Code; Act No. 3422; C.A. No. 472; and R.A. No. 2264 (Sec. 2)

The power to tax a business or enterprise does not extend to the articles or items of property dealt with or handled in connection with such business. Icard v. City of Baguio et al., 46 O.G. Supp. 11, 320; Medina et al. v. City of Baguio, 48 O.G. 4769; Santos Lumber Co. et al. v. City of Cebu et al., G.R. No. L-10197, Jan. 22, 1958; Johnston v. Regondola, G.R. No. L-9355, Nov. 26, 1957; Hawaiian Philippine Co. v. Mun. of Silay et al., 62 Phil. 961; We Wa Yu v. City of Lipa, G.R. No. L-9167, Sept. 27, 1956.

Many of these decisions, however, have ceased to be controlling owing to statutory changes.

[212] Sec. 2, R.A. No. 2264.

[213] *Ibid.*; R.A. No. 1435; Shell Co. v. Mun. of Sipocot, G.R. No. L-2680, March 20, 1959.

ready subject to the specific tax, with the lone exception of gasoline.[213] The chartered cities, however, may impose such taxes, since no prohibition in this regard has been addressed to them.

This municipal incapacity to impose certain kinds of taxes has been productive of controversies, usually on the question of whether a certain municipal levy is a prohibited tax or not. Particularly vulnerable to such a charge are business taxes which are graduated according to some mode of assessment. If the basis of classification is reasonable, our courts have been inclined to sustain municipal authority.[214] Thus, it has been held that a tax on business, graduated according to quarterly gross sales, is not a percentage tax but a graduated tax, being based on a given ratio between the gross income and the burden imposed upon the taxpayer.[215] In another case, it was also held that a fixed graduated license tax on merchants, graduated according to sales fixed period, is not a tax on their income, since it is not imposed directly upon the income, but upon the privilege of engaging in business.[216] A tax on the business of storing copra, assessed on the basis of weight in terms of kilos, was similarly upheld, on the principle that where the tax or fee imposed by the ordinance does not directly subject the produce or goods to tax but only indirectly as an incident thereto, or in connection with the business to be taxed, such tax is not specific and therefore not ultra vires.[217] And a tax on tin can factories having a specified maximum annual output in cans was held to be neither a percentage tax nor one on specified article.[217a] It has also been ruled that where under undoubted power to tax movie theaters, a city imposes a tax assessed according to the price of each ticket sold, there is no imposition of a capitation or poll tax but a valid business tax.[218]

In other cases, however, difficult to differentiate from the situations just mentioned, municipal impositions were held as constituting

---

A tax is specific when imposed on articles or goods subject to specific tax provided for in the Internal Revenue Code (C.A. No. 466). Shell Co. v. Vano, 50 O.G. 1046.

A tax imposed on the sale of gasoline, assessed in a fixed amount for every liter sold, is not merely a tax on business of selling oil, gasoline and the like but a specific tax, being imposed by some standard of weight or measurement and not regardless of it. We Wa Yu v. City of Lipa, G.R. No. L-9167, Sept. 27, 1956.

The power to tax a business does not carry with it a power to levy a tax on articles used in such business and a specific tax consisting of a few centavos per liter of oil and gasoline sold is therefore invalid. Medina et al. v. City of Baguio, 48 O.G. 4769.

A tax is in the nature of a percentage tax if it consists of a share or portion of the amount of the proceeds realized out of the sale of the commodities or articles sold. Shell v. Vano, 50 O.G. 1046.

[214] See cases in fn. 118.

Under a general power to impose and collect license fees and occupation taxes, a municipality has the right to classify and graduate such fees according to the estimated value of the privilege conferred, provided such classification is reasonable and does not contravene the provisions of the municipal charter. Syjuco Inc. v. Paranaque et al., G.R No. L-11265, Nov. 27, 1959.

[215] City of Manila v. Inter-Island Gas Service, G.R. No. L-8799, Aug. 31, 1956.

[216] Li Seng Giap et al. v. Mun. of Daet, et al., 54 Phil. 625; Syjuco Inc. v. Paranaque et al., G.R. No. L-11265, Nov 27, 1959.

[217] Uy Matiao & Co. Inc. v. City of Cebu et al., 49 O.G. 1797.

[217a] Shell v. Vano, 50 O.G. 1046.

[218] City of Baguio v. de la Rosa, G.R. No. L-8268, Oct. 24, 1955; Mendoza, Santos Co. v. Mun. of Meycawayan et al., G.R. Nos. L-6069 and L-6070, April 30, 1954.

[219] Hawaiian Philippine Co. v. Mun. of Silay et al., 62 Phil. 961.

forbidden taxes. A business tax assessed on each performance of a talking picture showhouse was held invalid, despite municipal authority to tax theaters.[219] A tax imposed by a city amounting to a few centavos per liter of gasoline sold was held to be a specific tax, not merely a tax on the business of selling gasoline and allied products, for the reason that it is imposed by some standard of weight or measurement and not regardless of it and therefore not distinguishable from the specific tax on oils imposed in the national internal revenue code.[220]

Similarly, where the taxing power of the city is confined to lumber yards, a tax purporting to be imposed on such business but assessed on the basis of board feet sold to customers, was held to be actually a tax on the sale of lumber and hence ultra vires.[221]

Where a taxing ordinance is attacked on the ground that it levies a forbidden tax, the courts are not bound by the designation given the tax imposed. The rule in this regard is that the name given to the tax by the ordinance is not controlling when the question calls for determination of what kind of tax is actually imposed.[222] Its true nature is to be ascertained by a due consideration of relevant circumstances, including the avowed purpose for which the levy is made,[223] or the mode of assessment and basis of classification.[224]

These rules are best exemplified in the efforts of the city of Manila to impose taxes on motor vehicles. One taxing ordinance was invalidated as having imposed a forbidden license tax or fee, although it was denominated a property tax which the city had authority to impose, where the tax rate found in the ordinance is based exclusively on the nature of the use of the motor vehicles and on their passenger capacity, and not upon the value, make, age and

---

[220] We Wa Yu v. City of Lipa, G.R. No. L-9167, Sept. 27, 1956; Medina et al. v. City of Baguio, 48 O.G. 4769.

But see R.A. No. 1435 and Shell Co. v. Mun. of Sipocot, G.R. No. L-12680, March 20, 1959, to the effect that specific taxes imposed by a municipality on sale of gasoline is valid. Also Sec. 2, R.A. No. 2264.

[221] Santos Lumber Co. et al. v. City of Cebu et al., G.R. No. L-10197, Jan. 22, 1958; Johnston & Sons Inc. v. Regondola, G.R. No. L-9355, Nov. 26, 1957.

For analogous impositions likewise held invalid, see Rojas & Bros. v. City of Cavite, G.R. No. L-10730, May 26, 1958; Isard v. City of Baguio, 46 O.G. Supp. 11, 320; Pacific Commercial Co. v. Alfonso et al, 49 Phil. 917.

[222] Philippine Transit Association v. Treas. of the City of Manila and the Mun. Bd. of the City of Manila, G.R. No. L-1274, May 27, 1949.

[223] Association of Customs Brokers & Manlapit v. Mun. Bd., Treas., Assessor and Mayor of Manila, G.R. No. L-4376, May 22, 1953, where the imposition was described as a property tax and fixed ad valorem, but levied for the main purpose of raising funds for repair, maintenance and improvement of streets and bridges, as stated in the ordinance itself. As this is what the Motor Vehicles Law is intended to prevent, the imposition, although purporting to be a property tax, is really a license or excise tax, since it is really imposed upon the performance of an act, enjoyment of a privilege or the engaging of an occupation.

[224] Philippine Transit Association v. Treas. of the City of Manila et al., G.R. No. L-1274, May 27, 1949, where the designation of the imposition as a property tax in the ordinance levying it was also disregarded, where the tax rate found in the ordinance is based exclusively on the nature of the use of the motor vehicles and on their passenger capacity and not upon the value, make, age and condition or state of preservation of the vehicle. Such tax is in the nature of a license fee on highway or streets and not at all a property tax.

For similar impositions likewise invalidated, see City of Manila v. Tanquintic, 58 Phil. 297; Vega & Gellada v. Mun. Bd. of the City of Iloilo, G.R. No. L-6765, May 12, 1954.

condition or state of preservation of the vehicles taxed.[225] A later tax ordinance was also invalidated, although it purported to impose a property tax assessed according to the value of the motor vehicle, where the ordinance itself stated that the main purpose of the levy is to raise funds for the repair, maintenance and improvement of streets and bridges, thus revealing the imposition as in the nature of the forbidden excise tax, which is imposed on the enjoyment of a privilege, among other things.[226]

The decisions, however, are by no means clear whether a municipal tax on a common carrier using motor vehicles for land transportation would constitute the license fee or tax prohibited under the Motor Vehicles Law. It has been held in an early case that the license fees taken out by an owner of motor vehicles pursuant to the Motor Vehicles Law does not preclude the imposition by a municipal corporation of a license to operate such motor vehicles as a common carrier.[227] It has been ruled recently, however, that fees imposed on the business of a common carrier using motor vehicles constitute the forbidden levy, on the reasoning that to license or tax the business of such common carrier is to impose a license fee or tax on the operation of its motor vehicles, already covered exclusively by the Motor Vehicles Law.[228]

Another forbidden tax, in the suppression of which our courts have been most vigilant, is the export or import tax on the movement or flow of goods in or out of municipal territorial limits.[229] While the prohibition is ostensibly addressed only to municipalities and municipal districts, yet our courts have not hesitated to extend it to the chartered cities.[230] Here also, they have not been impressed by nomenclature; they have instead gone behind the labels attached by the ordinances to the forbidden impositions.[231]

May 22, 1953; Philippine Motor Association et al. v. the City Assessor of Manila, et al., G.R. May 27, 1949.

[225] Philippine Transit Association v. Treas. of the City of Manila, et al., G.R. No. L-1274.

[226] Association of Customs Brokers & Manlapit v. Mun. Bd. of Manila, et al., G.R. No. L-4376, May 22, 1953; Philippine Motor Association et al. v. The City Assessor of Manila, et al. G.R. No. L-4442, May 22, 1953.

[227] Zamboanga Trans. Co. v. Mun. of Zamboanga, 42 Phil. 545, where it was held that the exemption given the motor vehicles under Act No. 2587 did not extend to exemption from municipal license required of transportation companies and agencies under the Rev. Adm. Code. A motor vehicle license is not a license to do business as a transportation company—as a common carrier. The former is obtained from the Insular Government; the latter is obtained from the local or municipal government. The former is a license to own motor vehicles; the latter is a license to operate those motor vehicles as a common carrier or transportation company. The former is a tax on the motor vehicle, while the latter is a tax on the business of the transportation company operating motor vehicles. (But see *h* of Sec. 2, R.A. No. 2264).

[228] Heras v. City Treas. of Quezon City, G.R. No. L-12565, Oct. 31, 1960.

[229] Act No. 82 (Sec. 44); Rev. Adm. Code (Secs. 2287, 2629).

[230] Saladana v. City of Iloilo, G.R. No. L-10470, June 26, 1958; Zamboanga Procurement Corporation v. City of Zamboanga, G.R. No. L-14806, July 30, 1960; Panaligan et al. v. City of Tacloban et al., G.R. No. L-9319, Sept. 27, 1957.

An ordinance requiring meat inspection of meat coming from outside city limits by a veterinarian and charging fees therefor was ruled invalid by the Secretary of Justice (Op. No. 6, series 1961, dated Jan. 11, 1951); Wise & Co. v. City of Manila, G.R. No. L-9957, April 25, 1958

[231] Saldana v. City of Iloilo, G.R. No. L-10470, June 26, 1958; Panaligan et al. v. City of Tacloban et al., G.R. No. L-9319, Sept. 27, 1957.

Thus, a levy was condemned as the forbidden export tax, although it purported to be merely an inspection fee. where it was imposed on every head of hog, cattle and carabao transported to other places.[232] Similarly invalidated was an ordinance with the ostensible purpose of regulating the exit of food supply and labor animals, prescribing a license permit and requiring the payment of certain fees therefor.[233] Also struck down as an export tax was a levy claiming on its face to be a business tax on copra dealers, but which was imposed on every hundred kilos of copra exported abroad.[234] However, a tax or fee is not a levy on export merely because part of the copra affected by such tax is eventually exported, where it is also made to apply to copra sold to be used for domestic purposes.[235]

(c) *Amount or rate of tax:*

As a rule, where municipal power to tax exists, the amount of rate imposed is within the sound discretion of the municipal or city council.[236] Our courts have declined to invalidate taxing ordinances on the ground that the tax rates are too high or the amounts imposed are too much.[237] In certain cases, however, the tax rates imposable by the municipal corporation are fixed by statute, as in the case of the cart or sledge tax [238] or the gasoline tax.[239] Where such statutory limitations are provided, the municipal corporation could not impose taxes higher than the maximum rates fixed in the law [240] or lower than the minimum amounts prescribed.[241] Under the Local Autonomy Law, as has been previously pointed out, the general discretion of municipal corporations to fix tax rates, hitherto untrammeled, is now limited to such as are not unjust, excessive, oppressive or confiscatory.[242]

---

[232] Saldana v. City of Iloilo, G.R. No. L-10470, June 26, 1958.
[233] Panaligan et al. v. City of Tacloban et al. G.R. No. L-9319, Sept. 27, 1957.
[234] Zamboanga Copra Procurement Corp. v. City of Zamboanga, G.R. No. L-14806, July 30, 1960.
[235] Uy Matiao & Co. Inc. v. City of Cebu et al., 49 O.G. 1797. Also Lu Do et al. v. City of Cebu, G.R. No. L-4846, June 8, 1953.
An ordinance was assailed on this ground in Li Seng Giap v. Mun. of Daet et al., 54 Phil. 625, but the imposition was invalidated on other grounds.
[236] See explicit wording of the provisions of law, Sec. 2, R.A. No. 2264.
For cases, see fn. 103.
[237] See cases in fn. 105.
[238] Secs. 2313, 2315, Rev. Adm. Code
[239] R.A. No. 1435 authorizes the imposition of a specific tax on gasoline and oils by municipal corporations at rates not exceeding the rates prescribed by the Internal Revenue Code in imposing specific taxes on such products. Shell Co. v. Mun. of Sipocot, G.R. No. L-12680, March 20, 1959.
[240] Pap Tak Wing & Co. v. Mun. Bd. of Manila et al., 68 Phil. 511; Chua Lao v Raymundo, G R. No L-12662, Aug. 18, 1958.
[241] Government v Galarosa, 36 Phil. 338; Carino v. Jamoraine. 56 Phil. 188.
[242] Par. 2, Sec. 2, R.A No. 2264.

V. EXERCISE OF THE TAXING POWER:

1. *Municipal discretion:*

As a rule, the actual exercise of an existing power to tax is a matter for municipal discretion.[243] This goes likewise for the extent of such actual exercise. Where a certain class or category of subjects is undoubtedly within the taxing power, the municipal corporation may tax less than all the members of such class, exempting the rest, provided that the basis of the classification is reasonable.[244]

As noted above, unless some provision of law intervenes, the amount or rate of tax imposed is also within the sound discretion of the municipal corporation.[245] So it is with altering tax rates already in existence. Where the municipal taxing authority is undoubted, existing tax rates may be changed, reduced or increased, provided no provision of the Constitution or any statute be contravened.[246] According to our courts, the council, whether municipal or city, is the best judge of these matters.[247] A reduction of the amounts fixed for cockpit license fees not falling below the statutory minimum,[248] as well as an increase in the tax rates prescribed for *panciterias*,[249] has been upheld as within municipal discretion and therefore valid.

2. *Mode of exercise:*

Like other municipal powers, the authority to tax is exerted through an appropriate ordinance enacted with the requisite formalities.[250] It is of no moment what name is given the imposition by the ordinance; the designation of the amounts imposed as "license fees, on subject matter within the taxing power of the municipal corporation does not qualify the imposition as proceeding from the police power and cannot sustain therefore the plea that the amount thereof is excessive." [251]

Where the taxing authority exerted is unquestioned, our courts are generally inclined to uphold the validity of taxing ordinances.

---

[243] Act No. 82; Rec. Adm. Code (Secs. 2243, 2307) as well as the city charters listed in fn. 16.

[244] Manila Race Horse Trainers Association of the Philippines & Sordan v. de la Fuente (taxing only boarding stables for race horses), G.R. No. L-2947, Jan. 11, 1951; Eastern Theatrical et al. v. Alfonso, 46 O.G. Supp. 11, 302 (taxing only specified amusements); Shell v. Vano, 50 O.G. 1046 (taxing only tin can factories with maximum capacity of 30,000 cans).

[245] See cases in fn. 103.

[246] Syjuco Inc. v. Paranaque et al., G.R. No. L-11265, Nov. 27, 1959; Yap Tak Wing & Co. Inc. v. Mun. Bd. of Manila, 68 Phil. 511.

An increase in tax rates was upheld valid in Mun. of Pagsanjan Inc. v. City of Manila, G.R. No. L-7922, Feb. 22, 1957

[247] Arquiza Luta v. Mun. of Zamboanga, 50 Phil. 748.

[248] Carino v. Jamoralne, 56 Phil. 188.

[249] Yap Tak Wing & Co., Inc. v. Mun. Bd. of Manila et al., 68 Phil. 511.

[250] Sec. 2, R.A. No. 2264 contemplates plainly the exertion of the taxing power through "tax ordinance" passed by the municipal or city council. Also Sec. 2307, Rev. Adm. Code; R.A. No. 1515; and the corresponding provisions of the city charters listed in fn. 16.

[251] Manila Motor Co. Inc. v. City of Manila, 72 Phil. 336; Medina et al. v. City of Baguio, 48 O.G. 4769; Manila Electric Co. v. City of Manila, G.R. No. L-8694, April 28, 1956.

But see City of Manila v. Inter-Island Gas Service, Inc., G.R. No. L-14096, July 26, 1960, where an imposition denominated "license fee" was deemed to have proceeded from police power.

A number of rules have been adopted to this end. One is judicial restraint. It has been held in one case that whether certain sums fixed for certain activities in the sale of liquor were appropriate for the purpose, could be better decided by the local authorities than by any one else. Accordingly, the courts should not adopt a policy of petty picking at municipal officials who are attempting to perform their duties, and so through judicial interference, unduly embarrass municipal administration.[252]

Another rule is that the construction in favor of validity is to be preferred. Accordingly, where an ordinance, on its face, regulates only hygienic and aesthetic massage practice, without mentioning therapeutic massage practice (which is regulated by the national government), said ordinance cannot and ought not to be construed as forbidding such practice of therapeutic massage, and its regulatory requirements should be taken to refer only to the practice of hygienic and aesthetic massage.[253]

In this connection, the presumption must be, in lieu of convincing evidence to the contrary, that ordinances are just and reasonable.[254] The spirit of the ordinance, rather than its letter, should govern its construction. The courts should look less to the words and more to the context, subject matter, consequence and effect.[255]

So where one ordinance imposes a license fee on dealers on second-hand motor vehicles and a subsequent ordinance imposes a larger fee on dealers on motor vehicles, without any qualifications, there is no repeal. Both ordinances are valid and can stand together, the subject matter of the first being sales of second-hand motor vehicles exclusively and the second sales of both new and second-hand motor vehicles.[256]

The rule on partial validity has also been applied to taxing ordinances. In one case, the penalty prescribed by a taxing ordinance exceeded the statutory maximum, so it was held that such penalty was void. But the invalidity of such provision of the ordinance did not annul the rest of its provisions, following the primary canon of constitutional law that when a statute is in part unconstitutional and in part good and it is possible to discard the unconstitutional part without affecting the good part, only the unconstitutional part

---

[252] Arquiza Luta v. Mun. of Zamboanga, 50 Phil. 748.
[253] Physical Therapy Organization of the Philippine, Inc. v. Mun. Bd. of Manila, G.R. No. L-10448, Aug. 30, 1957.
[254] Arquiza Luta v. Mun. of Zamboanga, 50 Phil. 748; Morcoin v. City of Manila, G.R. No. L-15351, Jan. 28, 1961.
[255] Manila Race Horse Trainers Association & Sordan v. de la Fuente, G.R. No. L-2947, Jan. 11, 1951.
[256] Macondray & Co. v. Sarmiento, G.R. No. L-3739.

of the statute will be discarded. Accordingly, only the provision for penalty was voided; the rest of the ordinance was upheld as valid.[257]

3. *Multiple impositions:*

With the increased scope of municipal power to tax, municipal corporations have acquired authority to subject business or other gainful activity pursued within municipal territoral limits to more than one impositon. The rule on this point is to the effect that a second license tax on a business already taxed is not invalid as double taxation, since the municipality may increase the rate of the tax originally imposed.[258] At any rate, where the taxing power is conceded, such multiple impositions, although constituting double taxation, are valid, since the Constitution does not forbid double taxation.[259]

On such principles, ordinances have been upheld, although they levy additional license taxes on activities already subject to municipal taxation. Thus, it has been held that a firm selling liquified gas may be taxed as a dealer in general merchandise, even if it is already paying license fees under a prior ordinance upon its storage and sale of its products, where the city was shown to have authority to tax such storage and sale as well as dealers in general merchandise.[260]

It has also been held that a manufacturer of soft drinks may be validly taxed for manufacturing and selling its products, although it has already paid license fees under an earlier ordinance for being engaged in such business.[261]

In certain situations, it is also recognized that a manufacturer selling its own products may become liable for the dealer's tax for sale of general merchandise.[262] A person engaged in the sale of lubricants is subject to a dealer's tax on such sales, in addition to the regular license tax for merchants.[263] Finally, a manufacturer can be subjected concurrently to two taxing ordinances, one imposing a fixed annual tax on all tin can factories and the other imposing an additional tax on such factories having a maximum annual output of 30,000 cans.[264]

4. *Administrative oversight:*

To forestall possible abuse of municipal taxing power, provision is made for at least administrative oversight in regard to its exer-

[257] U.S. v. Rodriguez, 38 Phil. 759
[258] Syjuco Inc. v. Paranaque et al., G.R. No. L-11265, Nov 27, 1959
[259] City of Manila v Inter-Island Gas Service Inc., G.R. No. L-8799, Aug. 31 1956
[260] *Ibid.*
[261] Syjuco Inc. v. Paranaque et al., G R. No. L-11265, Nov. 27, 1959.
[262] Manila Tobacco Association v. City of Manila, G.R. No. L-9549, Dec. 21, 1957.
[263] Johnston v. Regondola, G.R. No. L-9355, Nov. 26, 1957.
[264] Shell v. Vano, 50 O.G. 1046.

cise.[265] The provincial board is empowered to disapprove municipal ordinances which are beyond existing municipal authority, including those levying taxes.[266] Where the taxing ordinance, however, is within municipal taxing power, the prior approval of the provincial board is not required for its validity or effectivity.[267]

Formerly, the prior approval of the Secretary of Interior and the Secretary of Finance had to be secured in the event that the taxing ordinance exceeded rates or amounts specified by law.[268] Subsequently, it was only the Secretary of Finance whose prior approval was prescribed.[268a] His authority was broad; as construed by our courts, it comprised discretion to approve, disapprove or reduce the rate or amount of tax fixed in the ordinance.[269]

Without his approval in those cases specified by law, the taxing ordinance was invalid.[270] Where he approves the ordinance, it thereby acquires validity, although it may be enforceable at a later time and not immediately upon such approval.[271] Even when he has reduced the rates prescribed in the taxing ordinance, such ordinance remains valid and in force at the reduced rates without the necessity of repassing such ordinance in the municipal or city council.[272]

This requirement, however, did not extend to every municipal imposition; it applied only to rates for license taxes in excess of those prescribed by law as well as to provisions increasing existing rates by more than the specified percentage of increase.[273] Accordingly, the approval of the Secretary of Finance need not be had where the ordinance aimed not to impose a license tax on business but

---

[265] Santos v. Aquino, 49 O.G. 5344; Mun. of Pagsanjan v. Reyes, G.R. No. L-8195, March 23, 1956

For supervision by the provincial board, see Secs. 2233 and 2624(h), Rev. Adm. Code.

For supervision by national government, see Act No. 3422, C.A. No. 472; and R.A. No. 2264, Sec. 2.

[266] Secs. 2233 and 2624(h), Rev. Adm. Code. Earlier statutes were Act No. 676 (Sec. 1) and Act No. 1791 (Chanco v. Mun. of Romblon, 15 Phil. 101).

But the only ground on which the provincial board may disapprove a municipal ordinance is that the same is ultra vires or beyond the powers of the municipal council. Gabriel v. Prov. Bd. of Pampanga, 50 Phil. 686; Government v. Galarosa, 36 Phil. 338.

An Ordinance fixing a fee lower than that prescribed by statute is beyond the power of the municipal council and therefore properly disapproved by the provincial board under existing law. Government v. Galarosa, 36 Phil. 338.

In case the municipal corporation believed the disapproval by the provincial board to be erroneous, the remedy to appeal such action to the Chief of the Executive Bureau (Gabriel v Prov. Bd. of Pampanga, 50 Phil. 686); to the Governor General (Chanco v. Mun. of Romblon, 15 Phil. 101); to the Secretary of Interior (Sec. 2235, Rev. Adm. Code).

The present remedy is appeal to the President (SINCO & CORTES, *op. cit.* 177) or perhaps to the courts.

[267] Mendoza, Santos & Co. v. Mun. of Meykawayan et al., G.R. Nos. L-6069 and L-6070, April 30, 1954; Cariño v. Jamoralne, 56 Phil. 188; Olaviano v. Oriel, 45 O.G. Supp. 9, 7.

[268] Act No. 3422.

[268a] C.A. No. 472.

[269] Standard Vacuum Oil, Co. v. Antigua et al, G.R. No. L-6931, April 30, 1955; Mun. of Pagsanjan v. Reyes, G.R. No. L-8195, March 23, 1956; Syjuco Inc. v. Paranaque et al., G.R No. L-11265, Nov. 27, 1959.

[270] Smith, Bell Co. Ltd. v. Mun. of Zamboanga, 55 Phil. 466; Li Seng Giap et al. v. Mun. of Daet et al., 54 Phil. 625; Mun. of Pagsanjan v. Reyes, G.R. No. L-8195, March 23, 1956.

[271] Mun. of Pagsanjan v. Reyes, G.R. No. L-8195, March 23, 1956; Syjuco Inc. v. Paranaque et al., G.R. No. L-11265, Nov. 27, 1959.

[272] Santos v. Aquino, 49 O.G. 5344.

[273] C.A. No. 472.

a just and uniform tax for local public purposes,[274] or where the imposition provided for is new and not an increase of an existing tax.[275]

Presently, under the Local Autonomy Act, such prior approval is no longer required. However, as has been said, the Secretary of Finance may suspend the ordinance if the tax or fee prescribed therein is, in his opinion, unjust, excessive, oppressive or confiscatory.[276]

VI. CONCLUSIONS:

One of the unsettled questions in our country is the problem of municipal status. So far, we have hesitated to give full force and effect to the principle of local autonomy. But if the trend in municipal taxation is a reliable indicator, there is some basis for thinking that we have accepted this principle and that its full operation is only a matter of time.

We are coming to recognize the right of our people to run their own local affairs. There has been some lamentation over the fact that local concerns continue to be chiefly within the control of the central authorities.[277] But this is quite recent. Which is quite strange, for the notion that sovereignty lies in popular hands has been with us for over half a century. Yet it may be justified, even if it be not altogether pardonable. It merely means that our basic attitudes have not kept up with our political emancipation or with the philosophy we have embraced. We are still in the process of re-learning self-reliance and of erasing the impression, ingrained in us for over three centuries by an absolutist and paternalistic government, that the central administration is the dispenser of whatever is needful and the fountain of all authority.

But we have begun to shed the bad habits of our past. We are approaching Tocquiville's view that municipal independence is a natural incident or consequence of the principle that the people are sovereign. For it cannot be supposed for long that the people are the ultimate source of political power, and yet remain incompetent to manage their own local affairs save by the grace of central authority. The notion, fundamental to our system, that governmental authority stems from the people presumes power at the roots.

---

[274] Mendoza, Santos & Co., Inc. v. Mun. of Meycawayan, et al., G.R. Nos. L-6069 and L-6070, April 30, 1954

[275] Mun. of Cotabato v. Santos et al., G.R. No. L-12757, May 29, 1959.

[276] Sec. 2, R.A. No. 2264.

[277] See speech delivered by Sen. Gil Puyat on the floor of the Senate, Congress of the Philippines, on Feb. 10, 1960. The senator from Pampanga, now candidate for Vice President under the Nacionalista Party, proposed the conversion of some internal revenue taxes into local ones, to be accompanied by the transfer of certain functions from the national government to the local authorities, such as public education and public works.

If this independence, however, which we are still to realize is to be meaningful, local authority should have independent means. This is not only to say that local financing should be adequate. It is required that funds be raised by local authority on the basis of local needs and from local resources.

It is plain then that municipal financing should not come in the nature of doles from central authority. Our local governments should learn to avoid having to lean too heavily upon internal revenue allotments or hand-outs from the Chief Executive's discretionary funds. This is not, of course, possible immediately. We shall continue to be haunted by our bad habits. Whatever may be our hopes for the future, the fact remains that our municipal corporations, with the exception of a few cities and towns, continue to hang, in a financial way, to the coattails of the central government.[278]

Nevertheless, there are recent developments which in the long run promise to lend substance to the principle of local autonomy. Among the most important is the enlargement of the municipal power to tax. This makes for a long step to the desired situation where local needs and improvements will be met with local resources. Many sources of revenue have been opened to the municipal corporations, which were formerly beyond their reach. Broadly speaking, business of every sort as well as the exercise of privileges productive of gain is subject to their taxing authority.

Let us, however, not be misled into thinking that municipal power to tax as presently provided for is certain to yield the desired results. Certainly, it is greater than it used to be. But this is not to say that it is adequate to the purpose envisioned. It remains very much a problem whether the taxing power provided in the Local Autonomy Act will yield revenue sufficient to meet the pressing needs of each locality. Despite the fears of businessmen, it is less extensive than it could otherwise have been. The cold truth remains that we have continued to withhold from municipal taxing authority the more fruitful sources of revenue.[279] What is more, we have continued to hold such authority, as it were, on administrative leash.[280]

In addition, we must not forget that having power spells nothing more than just a conditional opportunity. The actual yield depends on the determination of municipal authorities to make use of their power, on their resistance to pressure from those who stand to be

[278] KUNPATCHAVUN, A., GOVERNMENTAL SERVICE. IN A PHILIPPINE MUNICIPALITY, Thesis for Master of Public Administration, University of the Philippines, May, 1960 (Unpublished).
"The first serious problem is fiscal in nature. The local units do not have any real control over the raising and spending of local revenues. Their power to tax is limited. Generally, they depend on national allotments or grants. Pork barrel appropriations are generally released to local governments on the basis of partisan politics" (*ibid.*, 94).
[279] Sec. 2, R.A. No. 2264

clipped by taxing ordinances, on the fruitfulness of the available tax preserves within the municipality or city. It could very well be that local politicians would succumb to pressure and relinquish without a fight their chance to establish the foundations of local autonomy. And it may well be that in spite of increased taxing power and municipal ambitions, tax ordinances would yield little because there is little to tax and what little there is does not yield much.[281]

---

[280] *Ibid.*, par. 2. The Secretary of Finance has suspended certain taxing ordinances, including that of Mandaluyong, Rizal (Manila *Times*, Sept. 23, 1960, p. 8).

[281] It is unfortunate indeed that the municipality cannot force the people to pay the taxes that are supposed to be due the government. Extensive tax campaigns have been tried but the method works only to a very limited extent. The people are willing to pay, but usually they do not have the ability to pay. Their resources are scarce. (KUNPATOHAVUN, *op. cit.*, 96).