TAXATION

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I. INCOME TAX

1. Taxable income—

Under Section 41 of Revenue Regulations No. 2,[1] when living quarters are furnished in addition to cash salary, the rental value of such quarters should be reported as income. This rule was interpreted in the case of *Collector of Internal Revenue v. Arthur Henderson*,[2] wherein the Court held that only the reasonable amount that the taxpayer would have spent for house rental and utilities should be subject to tax, and the excess considered as expenses of the corporation of which the taxpayer is an employee. Arthur Henderson was the president of the American International Underwriters for the Philippines and for the years 1948 through 1952, the Collector included as taxable income the allowances for rental, residential expenses, subsistence, utilities, club fees, and travelling allowances of Mrs. Henderson. The Hendersons' claim for a lesser taxable income was upheld by the Court, stating that while the quarters which the Hendersons occupied exceeded their personal needs, however, the exigencies of the husband's high executive position demanded and compelled them to live in a more spacious quarters and do a lot of entertaining and putting up houseguests to enhance the corporation's business.

In two 1958 cases,[3] the Supreme Court noted that the "net worth" or "inventory" method in determining the taxable income has been an accepted practice under the United States Internal Code. The rule laid down in those cases was applied in the case of *Commissioner of Internal Revenue v. Enrique Avelino*.[4] In civil cases, it has been held that the application of the net worth method does not require identification of the sources of the alleged unreported income and that the determination of the tax deficiency by the government is prima facie correct. The respondent Avelino must establish that the sum of ₱60,000 invested in the National Livestock Produce Corporation had been merely borrowed by him and did not come from his own income.

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* Member, Student Editorial Board, *Philippine Law Journal*, 1961-62.

[1] Promulgated February 11, 1941.

[2] G.R. Nos. L-12954 and L-13049. February 28, 1961.

[3] Eugenio Perez v. Court of Tax Appeals, G.R. No. L-10507, May 30, 1958 and Collector of Internal Revenue v. Aurelio P. Reyes, G.R. Nos. L-11534 and 11558, November 25, 1958.

[4] G.R. No. L-14847, September 19, 1961.

2. Allowable deductions—

Section 30 (2) of the National Internal Revenue Code allows corporations to deduct from their gross income all losses actually sustained and charged off within the taxable year and not compensated for by insurance; while section 96 of Revenue Regulations No. 2 requires that losses must usually be evidenced by closed and completed transactions. As held in the case of *Commissioner of Internal Revenue v. Asturias Sugar Central Inc.*,[5] war losses compensable under the provisions of the War Damage Act are deductible at the time the taxpayer has determined with reasonable certainty how much compensation he could get under said Act.

3. Educational institution exempt from tax—

A corporation claiming exemption from the payment of income tax as provided for in Section 27 (3) of the Tax Code should show that it is organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the rehabilitation of veterans and that no part of its income inured to the benefit of any private stockholder or individual. The University of the Visayas [6] has satisfactorily established its claim that it is organized and operated exclusively for educational purposes and that no part of its income has inured to the benefit of any stockholder or individual. The fact that the corporation's original articles of incorporation was amended to convert the corporation from a non-stock to a stock corporation is not conclusive proof that it is engaged in a profit-making business. This has been held in the cases of *Collector of Internal Revenue v. Vicente G. Sinco Educational Corporation* [7] and *Jesus Sacred Heart College v. Collector of Internal Revenue.*[8]

II. ESTATE, INHERITANCE AND GIFT TAXES

1. Big cases involving estate and inheritance taxes are rare in this jurisdiction; however, the year 1961 saw two such big cases. The first one was that of *Collector of Internal Revenue v. Fisher et al.*[9] the facts of which are as follows: Walter Stevenson, born in the Philippines of British parents,, married in 1909 another British subject, in Manila. In 1961, he died in San Francisco, California where they have established their residence. After his will was probated in San Francisco, the ancillary proceedings for the settlement of his estate in Manila were filed, and the inheritance and es-

[5] G.R. No. L-15013, August 31, 1961.
[6] Collector of Internal Revenue v. University of the Visayas, G.R No. L-13554, February 28, 1961.
[7] 53 O.G. 2470.
[8] G.R. No. L-6807, May 24, 1954.
[9] G.R. Nos. L-11622 and L-11668, January 28, 1961.

tate taxes duly paid. Thereafter, the administrator sought a refund of allegedly overpaid taxes.

The law determinative of the property relation of the spouses would be the English law even if the marriage was celebrated in the Philippines, both of them being foreigners. But since the English law has not been proven, the court has assumed the foreign law to be the same as Philippine law, i.e., in the absence of any antenuptial agreement, the contracting parties are presumed to have adopted the system of conjugal partnership as to the properties acquired during their marriage. Hence, the court correctly deducted ½ of the conjugal property to determine the taxable net estate of the decedent.

In view of the express provisions of both the Philippine and California Laws that the exemption would apply only if the law of the other grants an exemption from legacy, succession, or death taxes of every character, *there could not be partial reciprocity. It would have to be total or none at all.* The issue of reciprocity was not squarely raised in the case of *Collector of Internal Revenue v. Lara*[10] and the ruling therein can not control the determination of the case at bar.

The situs of the shares of stock, for purposes of taxation, being in this jurisdiction, their fair market value should be fixed on the basis of the price prevailing in this country.

While still living, Stevenson obtained a loan of $5,000 from the Bank of California National Association, secured by a pledge on shares of stock in the Mindanao Mother Lode Mines. The Tax Court disallowed this item on the ground that the local probate court had not approved the same as a valid claim against the estate and because it constituted an indebtedness in respect to intangible personal property which the Tax Court held to be exempt from inheritance tax. Another reason for the disallowance springs from Sec. 89 (b) of the NIRC which provides that no deductions shall be allowed unless a statement of the gross estate of the nonresident not situated in the Philippines appears in the return submitted to the office of the Collector of Internal Revenue.

In the second case, *Collector of Internal Revenue v. Ellen Wood McGrath,*[11] the Court reiterated the ruling in the first case cited above to the effect that no reciprocity can be extended in the case of the estate of Dora Anna Wood because the law of California does

[10] G.R. Nos. L-9456 and L-9481, January 6, 1958, 54 O.G. 2881.
[11] G.R. Nos. L-12710 and 12721, February 28, 1961.

not grant *full exemption* from estate and inheritance taxes to Filipino residents of that State.

Collector of Internal Revenue v. Antonio Prieto,[12] another case involving inheritance taxes, laid down the rule that for the purpose of computing a fair and just basis for the determination of the inheritance taxes due, the cash payments made by the respondents to their co-heirs to equalize their shares should be deducted from the value of the properties received by them.

2. Under Section 112 (a) (2) of the National Internal Revenue Code, gifts made by a resident in favor of persons other than the spouse and the legitimate, recognized natural, or adopted children to the extent of the first one thousand pesos a year are exempt from the gift tax. This provision was applied in the case of *Collector of Internal Revenue v. St. Stephens Association et al.*[13] where none of the contributors had given more than ₱1,000, hence donor's or donee's tax was demandable.

III. SPECIFIC TAXES

1. Meaning of "exempt educational films"—

The Philippine Manufacturing Company [14] had ordered for films produced by the Smith Sound System Laboratories. The Collector of Internal Revenue imposed a specific tax of ₱6,514.75 on said films duly imported. The PMC claims that these films were educational films, hence, exempt from the payment of specific tax, under Sec. 146 of the Tax Code, as amended by R.A. 295. The Court held, however, that the films in question are *not solely educational* films or cinematographic films used for visual education. Their main purpose is to advertise the petitioner's products, and whatever information or lesson and educational value they tend to give, convey or impart to the viewers are but incidental to the main purpose. Petitioner is not a civic institution founded solely for the noble purpose of serving the people, but a corporation organized for profit, being engaged in the manufacture of soap, lard and similar products. To follow petitioner's contention would result in absurd interpretation of the law for even the ordinary films exhibited in commercial theaters would fall in this category for they tend to convey a moral lesson or disseminate information.

2. Donation to a religious organization—

Under Republic Act No. 1916, to be exempt from the specific tax prescribed by Section 137 of the National Internal Revenue Code,

[12] G.R. No. L-11976, August 29, 1961.
[13] G.R. No. L-15562, May 31, 1961.

the following conditions must concur: (1) the imported articles must have been donated; (2) the donee-consignee must be "a duly incorporated or established international civic organization, religious or charitable society, or institution for civic, religious or charitable purposes"; and (3) and the articles so imported must have been donated for the use of said organization, society or institution for "free distribution and not for barter, sale or hire." All these requirements were found to be present in the case of *Commissioner or Internal Revenue v. Church of Jesus Christ "New Jerusalem,"* [15] and therefore, the cigarettes received from New York for free distribution to the poor and destitute members of the respondent organization are exempt from specific tax.

IV. PRIVILEGE TAXES ON BUSINESS AND OCCUPATION

1. Exemption from privilege tax on business

The issue raised in the case of *Collector of Internal Revenue v. Convention of Philippine Baptist Churches et al.*[16] was whether the defendant may be reputed to be engaged in business and therefore the sales made by it are subject to the payment of the privilege tax on business. The defendant owns a hospital in Iloilo City and operates a pharmacy which supplies medicines only to its patients. The charity patients get the medicines free while the paying patients are required to pay an overprice of 10% of the cost to cover the cost of the medicines supplied free. The test for the determination of whether or not a corporation is engaged in business is whether its business is operated for profit or not. The facts of the present case show conclusively that the defendant operates a pharmacy department not for profit but to afford facilities to the patients of its hospital, both charity and paying. The overprice charged to the paying patients goes exclusively to cover the cost of the medicines supplied free. The Court held that the sales of medicines to the paying patients are not taxable, and reiterated the rulings in *Collector of Internal Revenue v. St. Paul's Hospital of Iloilo* [17] and in *Immaculate Concepction Academy of Manila v. Commissioner of Internal Revenue.*[18]

The case of *Mithi ng Bayan Cooperative Marketing Association, Inc. v. J. Antonio Araneta, et al.,*[19] cited the Cooperative Marketing Law, Act No. 3425, as amended, as its basis for claiming privilege

[14] Philippine Manufacturing Co. v. Collector of Internal Revenue, G.R. No. L-13355, January 25, 1961.
[15] G.R. No. L-15772, October 31, 1961.
[16] G.R. No. L-11807, January 28, 1961.
[17] G.R. No. 12127. May 29, 1959.
[18] C.T.A. Case No. 582, June 28, 1961.
[19] G.R. No. L-14575, July 31, 1961.

tax exemption. Under this Law as amended, a cooperative marketing association should be organized by and composed of persons engaged in the production of agricultural products for the benefit of producers-members, to be considered an association organized under said law and exempt from the payment of privilege tax or fixed tax upon business. The by-laws of petitioner association in this case provides that any resident of the municipality of Santa Cruz, Laguna, who pays to the association a membership fee and buys in his name at least a share of its stock, even if he is not engaged in the production of agricultural products, may become a member of the association. The evidence does not sufficiently establish that all members of the association are engaged in the production of agricultural products, hence, it is not entitled to exemption from the payment of taxes.

The manufacturer becomes a dealer if he carries on the business of selling goods or his product manufactcured by him at a store or warehouuse apart from his own shop or factory. So held the Court in the case of *Co Tuan v. City of Manila.*[20]

2. Sales Tax—

(a) What constitutes a transaction subject to sales tax.

The Collector of Internal Revenue assessed deficiency sales tax on sales of logs to buyers in Japan From June 14, 1961 to June, 1953, plus surcharge. In the case of *Bislig Bay Lumber Company, Inc. v. Collector of Internal Revenue,*[21] petitioner company shipped logs to buyers in Japan under terms f.o.b and C. & I, Bislig, Surigao, defraying all expenses incurred from the sawmills to the loading on board the vessels and the buyers paying in Manila all freight and insurance charges. The Court affirmed the decision of the Court of Tax Appeals that ownership in the logs passed in the Philippines from the seller to the foreign buyers because the freight charges were paid by the buyers; the shipments were insured by the buyers; and what is more important, the bills of lading and other shipping documents were indorsed in blank by the seller and presented for collection to a local bank with whom the foreign buyers opened irrevocable letters of credit.[22]

(b) Sales tax on imported articles.

The percentage tax on imported articles required to be paid in advance by the importer, as provided in Section 183 (B), in relation to Sections 184 and 185 of the NIRC, and prior to the release of

[20] G.R. No. L-12481, August 31, 1961.
[21] G.R. No. L-13186, January 28, 1961.
[22] See also Misamis Lumber Co., Inc. v. Collector of Internal Revenue, 56 O.G. 517, and Western Mindanao Lumber Development Co., Inc., G.R. No. L-11710, June 30, 1958.

such articles from customs custody, shall be based on the import invoice value thereof plus mark-up. In order to determine the applicable mark-up under this Section of the NIRC, the particular section of the law in which the automobile is enumerated should first be determined. If the selling price does not exceed ₱5,000, then the automobile is enumerated under Sec. 185, and consequently taxable thereunder. If the selling price exceeds ₱5,000, then it is enumerated under Sec. 184 and it is taxable thereunder. The landed cost plus mark-up represents theoretically the selling price.[23]

(c) Meaning of "original or first sale"

The percentage tax levied under Sections 184, 185 and 186 of the National Internal Revenue Code is on every original sale, barter, exchange, and similar transaction either for nominal or valuable considerations to transfer ownership of, or title to, the articles enumerated therein. The meaning of original or first sale was construed in two 1961 cases. The first case involved *Yutivo Sons Hardware Company v. Court of Tax Appeals and Collector of Internal Revenue.*[24]

Until June of 1946, petitioner Yutivo Sons Hardware Co. bought cars and trucks from General Motors who, as importer, paid sales tax prescribed by Sections 184, 185 and 186 of the NIRC on the basis of its selling price to Yutivo. Said tax being collected only once on original sales, Yutivo paid no further sales tax on its sales to the public. In June, 1946, the Southern Motors, Inc. was organized by the leading stockholders of Yutivo to engage in the business of selling cars, trucks and spare parts. General Motors withdrew from the Philippines in June, 1947 and Yutivo Sons was appointed by it as importer of its cars and trucks. Yutivo, as importer, paid sales tax prescribed on the basis of its selling price to Southern Motors which continued to be its exclusive distributor.

In November 1960, the Collector of Internal Revenue made an assessment upon Yutivo for deficiency sales tax from July 1947 to December 31, 1949 on the ground that the taxable sales were the retail sales by Southern Motors to the public and not the sales at wholesale made by Yutivo to the latter inasmuch as the two companies were one and the same corporation, the former being the subsidiary of the latter. The question raised was whether Southern Motors was organized to evade the payment of taxes. The Court held in the negative for two reasons. Southern Motors was organized in June 1946 when it could not have caused Yutivo any tax savings

[23] Mayon Motors, Inc. v. Acting Commissioner of Internal Revenue, G.R. No. L-15000, March 29, 1961.
[24] G.R. No. L-13203, January 28, 1961.

as General Motors was then the importer and the one solely liable for sales taxes. Furthermore, "tax evasion" is a term that connotes fraud through the use of pretenses and forbidden devises to lessen or defeat taxes. The transaction between Yutivo and Southern Motors has always been in the open, embodied in documents which are constantly subject to inspection by the tax authorities. The Court, however, held that Yutivo must be assessed a deficiency sales tax computed on the selling price of Southern Motors after deducting therefrom the sales tax due thereon, inasmuch as the tax had been invoiced separately by Southern Motors.

In accordance with the court's ruling in *Yutivo & Sons Hardware Company v. Collector of Internal Revenue, supra,* a taxpayer may not be allowed to deny tax liability on the ground that the sales were made through another and distinct corporation when it is proved that the latter is virtually owned by the former or that they are practically one and the same corporation. Evidence at hand [25] shows that Frank Liddel owned both the Liddel & Co. and Liddel Motors, Inc., the latter being the retailer of cars and trucks imported by the former. The mere fact that one or more corporations are owned and controlled by a single stockholder is not of itself sufficient ground for disregarding separate corporation entities. However, the progressive rate of sales tax imposed under Sections 184, 185 and 186 of the NIRC naturally would tempt the taxpayer to employ a way of reducing the price of the first sale.

Where the sales to the corporation had always been embodied in proper documents constantly subject to inspection by the tax authorities, the return filed on the basis of such sales and not those to the public,, cannot be said a false return and subject the taxpayer to a surcharge. But penalty for late payment should be imposed.

The deficiency sales tax should be based on the selling price to the public after deducting the tax paid on the original sales.

c. Void Sales

Petitoner Antonio Medina in the case of *Antonio Medina v. Collector of Internal Revenue* [26] was a forest concessionaire in Isabela, and from 1949 to 1952, he sold the logs produced in his concession to his wife who was engaged in business as a lumber dealer. Mrs. Medina, in turn, sold the logs bought by her from her husband through an agent who used to be her husband's agent before she started to deal in lumber. The Collector of Internal Revenue, on the thesis that the sales made by petitioner to his wife were null and

[25] Liddel & Co., Inc. v. Collector of Internal Revenue, G.R. No. L-9687, June 30, 1961.
[26] G.R. No. L-15113, January 28, 1961.

void under Article 1490 of the New Civil Code, prohibiting sales between husband and wife, considered as taxable sales those made by the wife through the spouses' common agent, as original sales taxable under Sec. 186 of the Tax Code and imposed the corresponding assessment. Decision of the Collector is affirmed.

d. Deduction of cost of materials used.—

In sustaining the assessment of the tax against the petitioner in the case of *Tan Chiu v. Collector of Internal Revenue*,[27] the Court declared that the purpose of Sec. 186 of the Internal Code authorizing the deduction of the cost of materials manufactured from the gross selling price, is to avoid or prevent double taxation; that the purpose of the law is to prevent a second assessment of the percentage tax on the material that went into the production of the manufactured article, but that as the sales tax on the materials in the case of the petitioner, which were manufactured into undershirts were not required to pay, by virtue of the provisions of R.A. 901, because of the exemption granted to new and necessary industries, said materials not having been subjected previously to the payment of the sales tax, their value should not be deducted from the selling price of the manufactured article.

3. Compensation Tax—

The car imported from the United States by respondent in the case of *Collector of Internal Revenue v. Hon. Eulogio Rodriguez, Jr., et al.*,[28] had a push button radio and antenna already installed thereon. The value used by petitioner in computing the compensating tax included the push button radio and antenna. Contrary to the conclusion of the CTA which ordered petitioner to make the refund, the push button radio and antenna in question were considered by the Supreme Court as component parts of the automobile designed and made primarily for the use of said vehicle, and are not the radio and antenna made and intended for sale for general use. Thus, the plaintiff in the case of *Masterbilt Products Corp. v. U.S.*[29] was not allowed a refund of excise tax paid on the manufacturing and selling of a combination cigarette lighter and dispenser primarily adapted and intended for use in motor vehicles even though the evidence showed that the devices could be made to work on a table, desk or ash receiver.

The case of *Borja v. The Collector in Internal Revenue, et al.*[30] laid down the rule that goods purchased directly from abroad are

[27] G.R. No. L-15008, January 28, 1961.
[28] G.R. No. L-12783, March 25, 1961.
[29] 42 F. Supp. 294, 28 AFTR 754.
[30] G.R. No. L-12134, November 30, 1961.

not exempt from compensating tax. The legal philosophy underlying the imposition of compensating tax under Section 190 of the Tax Code is to place persons purchasing goods from dealers doing business in the Philippines on an equal footing, for tax purposes, with those who purchase goods directly from without the Philippines. Under the present tax law, the former bear the burden of the local sales tax because it is shifted to them as part of the selling price demanded by the local merchants, while the latter do not.

4. Tax on occupation

Petitioner in the case of *Virginia Amor et al. v. Commissioner of Internal Revenue* [31] are pharmacists and registered nurses of the Insular Lumber Company Hospital at Fabrica, Negros Occidental. The Court held that they are not employed in any branch of the service of the Government, or any religious, educational, or charitable institution, hospital, or any similar establishment not conducted for private gain.

V. DOCUMENTARY STAMP TAX

1. What constitutes "bill of lading"—

"Bills of Lading" in modern jurisprudence, are not those issued by masters of vessels alone; they now comprehend all forms of transportation, whether by land or sea, and includes the receipts for cargo transported.[32] The claim that freight tickets issued by petitioner in the case of *Mindanao Bus Company v. The Collector of Internal Revenue* [33] are not bills of lading subject to documentary stamp tax, was dismissed by the Court. Petitioner is a common carrier engaged in transporting passengers and freight by means of auto buses. The Court held that freight tickets issued by the petitioner are subject to documentary stamp tax. It further held that the agent-examiner of the Collector of Internal Revenue was correct in using the average method to determine the number of booklets used during the period in question and that the value of the goods covered by each freight ticket is not less than ₱5.00.

VI. MISCELLANEOUS TAXES

1. Amusement tax

The case of *Calanog v. Collector of Internal Revenue* [34] laid down the rule that a promoter of a boxing exhibition for charitable pur-

[31] G.R. No. L-16187, April 29, 1961.
[32] Interprovincial Autobus v. Collector of Internal Revenue, G.R. No. L-6741, January 31, 1956.
[33] G.R. No. L-14078, February 24, 1961.
[34] G.R. No. L-15922, November 29, 1961.

poses is not exempt from the payment of amusement tax where the net proceeds realized are not substantial or where the expenses incurred are exorbitant.

VII. TAXES IMPOSED UNDER VARIOUS LAWS

A. SPECIAL EXCISE TAX ON FOREIGN EXCHANGE (R.A. 601)

1. On imported fertilizers—

Imported fertilizers are exempt from the payment of the exchange tax only if the same were imported by the planters or farmers directly or through their cooperatives. On the case of *La Carlota Sugar Central, et al. v. Pedro Jimenez*,[35] it is admitted that the Central is not the planter ultimately benefited by the fertilizers, much less a cooperative. The word "directly" contained in Sections 1 and 2 of Republic Act 601 as amended by Republic Act 1375 has been interpreted to mean "without anything intervening". Furthermore, the rule is that statutory provisions of taxes are strictly construed in favor of the State and against the taxpayer.

2. On imported stabilizers and flavors—

Colgate-Palmolive Philippines[36] filed with the Central Bank applications for refund of the exise tax it had paid based on Section 2 of R.A. 601 (Exchange Tax Law) which provides that "foreign exchange used for the payment of the cost, transportation and/or other charges incident to the importation into the Philippines of x x x stabilizer and flavors x x x shall be refunded to any importer making application therefore, upon satisfactory proof of actual importation under the rules and regulations to be promulgated pursuant to Section 7 thereof." The Auditor General ruled that the term "stabilizer and flavors" as used in the law refers only to those materials actually used in the preparation or manufacture of food and food products, on the principle that "general terms may be restricted by specific words." But this rule is applicable only to cases where, except for one general term, all the times in an enumeration belong to or fall under one specific class. This rule does not apply to the case at bar because while it is true that the term "stabilizer and flavors" is preceded by a number of articles that may be classified as food or food products, it is likewise true that the other items immediately following it do not belong to the same classification. Thus, the words "fertilizer, poultry feed, vitamin concentrate, cattle,

[35] G.R. No. L-12436, May 31, 1961.
[36] G.R. No. L-14787, January 28, 1961.

etc." Decision of the Auditor General is reversed, and dental cream stabilizers and flavors are exempt from the 17% excise tax.

3. On imported "sotanghon"—

The Court held in the case of *The Commissioner of Customs v. Farm Implement and Machinery Co.*[37] and which reiterated the ruling in a case between the same parties,[38] that "sotanghon" falls under Commodity Code No. 040804—UI, and not under Commodity Code 040802—NEC, because it should be classified as "vermicelli", it being a preparation similar to "macaroni, spaghetti, and vermicelli".

B. MOTOR VEHICLE REGISTRATION FEE

In the case of *Luneta Motor Co. v. Villaluz, et al.*,[39] where the owner of a motor vehicle failed to pay the second installment of the yearly registration fee, the registration of the vehicle becomes delinquent and the penalty or surcharge therefor should be based on the registration fee for the whole year and not merely for a portion thereof.

C. REAL ESTATE TAX

The exemption in favor of property used exclusively for charitable or educational purposes is not limited to property actually indispensable therefor but extends to facilities which are incidental to and reasonably necessary for the accomplishment of said purposes. The admission of pay-patients does not detract from the charitable character of a hospital, if all of its funds are devoted exclusively to the maintenance of the institution as a public charity. The existence of the school of midwifery within the premises does not affect the exemption to which the hospital is entitled. Thus the Court held in the case of *Jose V. Herrera, et al. v. The Quezon City Board of Assessment Appeals.*[40]

VIII. MUNICIPAL TAXATION

The municipal council, cannot, under Rep. Act No. 1224, abolish an already existing distance requirement on cockpit and provide no distance limitation at all on the operation of such amusement place. The authority to determine the distance does not carry with it the authority to exempt cockpits from observing any distance at all.[41]

In general, a license, as distinguished from a tax, is a charge for the purpose of regulation and is based on the police power of

[37] G.R. No. L-12203, May 30, 1961.
[38] G.R. No. L-12260, May 30, 1960.
[39] G.R. No. L-14210, June 30, 1961.
[40] G.R. No. L-15270, September 30, 1961.
[41] Sarmiento

the state. In the case of *Morcoin Co., Ltd. and Suter, Inc. v. The City of Manila, et al.*[42] the Court declared Ordinance No. 3628 of the City of Manila enacted March 14, 1954, to be null and void.

The amount of ₱300 imposed by this Ordinance as license fee for the installation and use of juke box machines was found to be unreasonable and far exceeded the expense of issuing the license and of regulating their operation. It will be observed that the ordinance in question did not even provide for inspection and supervision of each machine installed. And the Committee on Laws and Finance of the Municipal Board of the City of Manila themselves—which conducted a public hearing in connection with the petition filed during the pendency of this case—found juke box operators would not make any profit by paying the license fee. In this connection, it should be stated that although the presumption is always in favor of the validity or reasonableness of the ordinance, such presumption must nevertheless be set aside when the invalidity or unreasonableness appears on the face of the ordinance itself or is established by proper evidence.

This ruling was reiterated in *Juan P. Gerena, et al., v. The City of Manila, et al.*,[43] wherein it was declared that the amount of license fees that may be imposed upon juke box machines and other coin-operated contrivances can not be prohibitive, extortionate, confiscatory, or in an unlawful restraint of trade, but should be approximately commensurate with and sufficient to cover all the necessary or probable expenses of issuing the license and of such inspection, regulation and supervision as may be lawful. The same doctrine was laid down in the case of *American Mail Line v. City of Basilan.*[44]

The validity of Manila City Ordinances Nos. 3628 and 3941 are sought to be settled in the case of *Gorgonio Miranda, et al. v. City of Manila.*[45] The first prohibits the operation of pinball machines within a radius of 200 meters from any public place or building, and fixes an annual fee of ₱300 for the installation and use of said machines; whereas the latter provides that no license for the operation of pinball machines shall be granted under any circumstances. Similar ordinances were held valid and constitutional as coming under the general welfare clause of the City's Charter. Pinball machines are gambling devices and can be supressed being injurious to the public. This reiterates the rule in *Uy Ha v. City Mayor, et al.*[46]

[42] G.R. No. L-15351, January 28, 1961
[43] G.R. No. L-16505, January 28, 1961.
[44] G.R. No. L-12647. May 31, 1961.
[45] G.R. Nos. L-17252 and L-17276, May 31, 1961.
[46] G.R. Nos. L-14149 and L-14069, May 30, 1960

IX. COURT OF TAX APPEALS

1. JURISDICTION—

Whether the CTA has jurisdiction to act on petition for the annulment of distraint orders of the Collector of Internal Revenue was the subject of the decision in *Jose Pantoja v. Saturnino David, et al.*[47] The power of the Tax Court to act on petitions for the annulment of distraint orders by the Collector has been recognized by the Supreme Court in *Collector of Internal Revenue v. Zulueta*[48] and *Blaquera v. Rodriguez.*[49] In the first, the reason for annuling was like the present case, that is, prescription of the right of the collecting officers to issue the warrant of distraint. In the second, the Supreme Court reiterated the view that the Court of Tax Appeals constituted the legal forum wherein to discuss the validity of a distraint by the Collection of Internal Revenue. Again, in *Collector v. Avelino,*[50] the Supreme Court held that proceedings to invalidate a warrant of distraint and levy did not violate the prohibition against injunctions to restrain the collection of taxes; because the proceedings were directed at the right of the Collector to collect it by distraint and levy.[51]

The Board of Tax Appeals had no jurisdiction[52] over appeals involving disputed assessments. Consequently, its decision therein is null and void except in cases previously decided by the Board and then appealed to the Supreme Court, and in cases pending in the Board at the time of the Court of Tax Appeals which shall be transferred to the latter court.

In 1946, a special proceeding for the settlement of the intestate estate of Maria Lim Vda. de Uy was commenced. With leave of the probate court, an intervention was filed by the Republic Philippines alleging that the deceased made, a few weeks before her death, simulated sales to her children which properties should be made liable for transfer taxes and penalties and war profit tax. These allegations were denied by the appellants, in this case of *Intestate Estate of Maria Lim Vda. de Uy.*[53] The Court held that the main action here for the settlement of the estate will continue as such under the jurisdiction of the probate court, but the issue on the alleged simulated sales and on the obligation to pay the taxes claimed by the Government will be taken out of the main proceeding and submitted to the Court of Tax Appeals for determination pursuant

[47] G.R. No. L-10765, February 28, 1961.
[48] 53 O.G. 6532
[49] 54 O.G. 8632.
[50] G.R. No. L-9202, November 19, 1956.
[51] See also Castro v. Blaquera, 53 O.G. 2135.
[52] Carmen Planas v. Collector of Internal Revenue, G.R. No. L-15934, October 31, 1961.
[53] G.R. No. L-15386, April 29, 1961.

to R.A. 1125. This case involved disputed assessments, hence, under Secs. 7 and 22 of R.A. 1125, the Court of Tax Appeals shall have exclusive appellate jurisdiction to review on appeal the decision of the Collector of Internal Revenue thereon. The question of simulated sales is merely incidental to the issue of validity or legality of the disputed assessments.

Under R.A. 1125, the Tax Court has the authority formerly vested in the courts of first instance, and the judicial action contemplated in Section 316 of the Tax Code is commenced by filing, in the Tax Court as well as in a court of first instance, of a complaint for the collection of taxes.[54]

2. PERIOD TO MAKE DECISION

The requirement that cases brought before the Court of Tax Appeals be decided within thirty days after the submission thereof for decision is *merely directory*. Hence, decisions signed after the thirty-day period are valid.[55]

3. PERIOD OF APPEAL

The 30-day period within which to appeal should be counted from the receipt of the final decision of the Collector. This was the ruling in the case of *Robert L. Janda v. Collector of Internal Revenue* [56] where after a series of negotiations regarding a contested income tax assessment, Robert Janda received from the Collector a letter dated January 14, 1955, demanding payment of the amount of ₱577.00 as deficiency income tax, plus an administrative penalty of ₱40.00, and the Collector made it clear that no further reduction would be granted. Janda, the taxpayer, should not be blamed for counting his time to appeal from that last communication, as held also in the case of *St. Stephens Association v. Collector of Internal Revenue.*[57]

The Court reiterated in the case of *Republic of the Philippines v. Dy Chay* [58] that under Sections 7 and 11 of R.A. 1125, the Court of Tax Appeals only assumes exclusive appellate jurisdiction over a case involving a disputed assessment if and when the same is brought before it within the reglamentary period of 30 days from the taxpayer's receipt of the decision of the Collector of Internal Revenue and this only takes place when the appeal is taken by the taxpayer who is adversely affected by the decision. Note that the

[54] Santiago Gancayco v. The Collector of Internal Revenue, G.R. No. L-13325.
[55] Liddell & Co., Inc. v. The Collector of Internal Revenue, G.R. No. L-9687, June 30, 1961.
[56] G.R. No. L-10723, February 28, 1961.
[57] 55 O.G. (13) 2243.
[58] G.R. No. L-15705, April 15, 1961.

law only provides for a remedy to a taxpayer but not to the government, and when a situation arises where the taxpayer neither pays the tax assessed against him nor contests its validity before the Court of Tax Appeals, the only remedy left to the government, aside from distraint and levy, is to enforce its collection by judicial action in the *ordinary courts of justice.* This was also the ruling in *Uy Ham v. Republic.*[59]

X. REMEDIES

A. ASSESSMENT

1. Period to make assessment—

Internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding court without assessment for the collection of such taxes shall be begun after the expiration of such period.[60]

2. Period to question assessment—

A taxpayer has 30 days to dispute assessment of the Bureau of Internal Revenue by appealing it to the Court of Tax Appeals, in accordance with the provisions of Sec. 11, R.R. 1125. If the taxpayer fails to do so, the assessment becomes final, executory, and demandable, and the assessment can no longer be questioned by the taxpayer. As held by the Court in the case of *Republic of the Philippines v. Antonio Albert,*[61] the appellant, after receiving the denial of his protest against the deficiency tax assessment made against him, should have appealed therefrom within 30 days from June 21, 1955, his failure to do so having caused said assessment to become final, executory and demandable. Therefore, when on February 4, 1957, the action for collection was commenced, appellant was already barred from invoking any defense that would reopen the question of his tax liability on the merits.

3. Errors in assessment—

Taxes are fixed by law and are not subject to contract between the taxpayer and the officer, except when there is an actual compromise, which does not exist in the case of *The Collector of Internal Revenue v. Ellen Wood McGrath, supra.* The acceptance of any amount of employees, which does not constitute a full payment of the amount fixed by law, is no ground for the claim for exemption by the taxpayer from liability for the remaining amount due under

[59] G.R. No. L-13809, October 20, 1959.
[60] Collector of Internal Revenue v. Manuel B. Pineda, G.R. L-14522, May 31, 1961.
[61] G.R. No. 12996, December 28, 1961.

the law. Any error made by a tax official in the assessment or computation of taxes does not have the effect of relieving the taxpayer from the full amount of liability as fixed by law, as held in the case of *Lewin v. Galang*.[62]

It is admitted that the Bureau of Internal Revenue had taken possession of the books of appellant and that the same were lost while in its possession. In the absence of such best evidence, appellant should be given opportunity to prove by secondary evidence his contention that, in some respects, the assessment against him is incorrect.[63]

B. COMPROMISE OF TAX LIABILITY

In the case of *People of the Philippines vs. Carlos Magdaluyo*,[64] the question raised was whether the Collector of Internal Revenue has authority to compromise the criminal aspect of the case. Here, Magdaluyo was criminally prosecuted for violation of Section 125 in relation to Secs. 133, 137 and 147 of the Tax Code. While the case was pending investigation, a compromise agreement was offered by the defendant and this was approved by the Collector. As the defendant failed to pay his full tax liability and penalty of ₱1,000, an information was filed by the Pasay City attorney. After a week, defendant paid in full his tax obligation as well as the compromise penalty, but the Pasay City attorney refused to withdraw the information. The Court held in this case that a tax case is one which the law (Sec. 309 of the Tax Code) expressly allows to be compromised; hence, Sec. 9 of Rule 123 of the Rules of Court is not applicable. The case of *Rovero vs. Amparo, et al.*[65] is not applicable because the Court held in that case that the Commissioner of Customs may not, under Art. 1369 of the Rev. Adm. Code, compromise decided cases; in the instant case, the compromise was made *prior* to the filing of the information. The cases of *U.S. vs. Chua Puete et al.*[66] and *Morris vs. U.S.*[67] are not applicable because in those cases, the compromise was not approved by the tax authority and the offer of compromise was made after the complaint was filed.

C. REMEDIES FOR COLLECTION

1. Means of Collection

There are two civil remedies for the collection of internal revenue taxes, namely; (a) by distraint and levy; and (b) by judicial

[62] G.R. No. 15253, October 31, 1960.
[63] Ricardo Santos v. Hon. Mariano Nable et al., G.R. No. 12073. May 23, 1961.
[64] G.R. No. L-16285, April 20, 1961.
[65] G.R. No. 5482, May 5, 1952.
[66] 22 Phil. 327
[67] 123 F. 2d 957

action per Sec. 316 of Tax Code. The first may not be availed of except within 3 years after the return is due or has been made. After the expiration of said period, income taxes may not be legally and validly collected by distraint and or levy.[68] Gancayco's income tax return was filed on May 10, 1950, so that the warrant of distraint and levy issued on May 15, 1956, long after the expiration of the said 3-year period was illegal and void, and so was the attempt to sell his properties in pursuance of said warrant. Thus held the Court in the case of *Santiago Gancayco vs. the Collector of Internal Revenue.*[69] The judicial action mentioned in the Tax Code must be brought within five years, and in the case at bar, it should be computed from April 8, 1953, the date when the Collector reconsidered, upon request of petitioner, the deficiency income tax assessment made on May 14, 1951. The assessment is what petitioner contested in his petition filed within Tax Court. So that the statute of limitations does not bar this petition and the deficiency tax can be collected.

a. Suspension of running of prescriptive period for collection of tax —

The only agreement that can suspend the running of the prescriptive period for collection of tax is a written agreement between the taxpayer and the Collector, entered before the expiration of the five-year prescriptive period, extending the period of limitation prescribed by law.[70]

2. TAX SALE

It is true that a sale at public auction is presumed valid and legal unless the contrary is proven. However, where the sale for tax delinquency of property was made without notice to the taxpayer and without complying with the formalities regarding advertisement and posting of notice, the tax sale is void ab initio and the action to set aside the same does not prescribe.[71]

3. INJUNCTION BOND

Fernando Mendoza [72] upon filing of a bond, was granted his petition for injunction to restrain the Collector of Internal Revenue from seizing an importation of onions for which no entry was made by the petitioner. But when the petitioner sought to enforce the

[68] Sambano v. Court of Tax Appeals, G.R. No. L-8652, March 30, 1957 and previous cases. But see Sec. 51(*d*), NIRC, as amended.
[69] G.R. No. L-13325, April 20. 1961.
[70] Collector of Internal Revenue v. Manuel B. Pineda, G.R. No. 14522, May 31, 1961.
[71] Amanda Trigal et al. vs. Sabina Tobias et al., G.R. No. 15869, August 31, 1961.
[72] Fernando Mendoza v. Edilberto David et al., G.R. No. 9452, March 27, 1961.

writ, he found that the crates of onions were already deteriorated and so he gave notice to the Collector that he was abandoning them. The case was then dismissed. The questions raised were whether the injunction bond was subject to forfeiture and whether the restraining order precluded the customs officials from collecting the charges that should be paid by the importer. The Court held in the negative on both questions. While it is true that because of the issuance of the injunction the proceedings regarding the forfeiture had been temporarily stayed, this is of no consequence, considering that in case of forfeiture only the merchandise forfeited stands responsible for the payment of the customs liability. The merchandise never left the possession of the Collector, notwithstanding the issuance of the writ. With respect to the collection of the charges, the clear implication of Sec. 1398 of the Rev. Adm. Code is that the maximum penalty imposable on seized merchandise is the forfeiture itself. When, therefore, the trial court ordered the dismissal of the case, the Collector was left free to continue with the seizure proceeding with a view to the final disposition of the merchandise.

D. REFUND

1. Period within which to claim

Under Section 30 of the Tax Code, no suit for refund shall be begun after the expiration of two years from date of payment. This provision, which is mandatory, is not subject to any qualification and applies regardless of the conditions under which the payment has been made. Hence, the petition of Guagua Electric [73] claiming a refund for overpayment of franchise tax is dismissed because it had been filed beyond the two-year period.

In the case of *C.G. Nazario & Sons, Inc. vs. Central Bank of the Philippines, et al.*[74] the action was brought in 1958 to recover a sum representing the 17% special tax on foreign exchange sold to plaintiff and collected by virtue of R.A. 601. The plaintiff argues that its cause of action accrued only upon the promulgation of the decision of *PNB vs. Zulueta* [75] on August 30, 1957. The Court held in that case that an obligation, which was incurred before the creation of the 17% excise tax under R.A. 601, is not subject to tax for the reason that its imposition on an existing obligation would have the effect of impairing the obligation of contracts. The plaintiff's contention in this case is without merit. If the tax is unlawfully collected, the action to recover the same should accrue from the

[73] Guagua Electric Light Plant Company. Inc. v. The Collector of Internal Revenue et al., G.R. No. L-14421, April 29, 1961.
[74] G.R. No. L-15225, April 29, 1961.
[75] G.R. No. L-7271, August 30, 1957.

date of collection (Art. 1150 of the New Civil Code). The error of the Monetary Board in the interpretation of the law may not change or extend the time of the accrual of the action. The period within which the action for refund should have been brought is that fixed in Article 1145 of the Civil Code—*six years*. As the tax was paid in 1951, and the action brought in 1958, the action is barred.

2. Sec. 306, NIRC in relation to Sec. 11, R.A. 1125

The ruling laid down in the *Collector of Internal Revenue vs. the Court of Tax Appeals and Hume Pipe & Asbestos Co.*[16] was quoted from *Manila Electric Co. vs. Collector of Internal Revenue*[17] and reiterated in *Paracale-Gumaus Co. vs. Blaquera.*[18] Under Republic Act 1125, the taxpayer can question the assessment of the Collector before paying the tax by appealing to the Court of Tax Appeals within 30 days from receipt thereof. However, in case he should pay the tax first and later bring the action for its refund, as is the case of the *Collector vs. The CTA and Hume Pipe,* he must comply with the requirements of both Section 11 of R.A. 1125 and Sec. 306 of the NIRC, that is, he must file a claim for refund with the Collector of Internal Revenue within 2 years from the date of his payment of the tax, as required by said Sec. 306 and appeal to the CTA within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by Section 11 of R.A. 1125. If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the CTA before the end of the two-year period without awaiting the decision of the Collector. This is so because of the positive requirement of Sec. 306 and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute.[19]

Respondent company paid its income tax in two installments, namely, August 14, 1954 and November 11, 1954. On June 12, 1956, the company filed a petition for refund of an alleged overpayment on its income tax, but on August 14, 1956, before petitioner Collector could make a ruling on the petition for refund, the company filed a petition for review with the CTA. The Collector alleged that the CTA has no jurisdiction to entertain the petition for refund. After hearing, the CTA promulgated a resolution holding that it has jurisdiction over the case and ordered that the same be set for hearing on the merits. The petitioner Collector brought the present petition.

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[16] G.R. No. L-11494, January 28, 1961.
[17] C.T.A. Case No. 83, Resolution of March 30, 1955.
[18] C.T.A. Case No. 211, Resolution of August 22, 1956
[19] Johnston Lumber Co. v. Court of Tax Appeals, G.R. No. L-9292, April 23, 1957 and Allison J. Gibbs and Esther K. Gibbs v. Collector of Internal Revenue and C.T.A., G.R. No. L-13453, February 29, 1960.

The Court held that the petition of the Collector should be dismissed because the resolution of the CTA was merely interlocutory. The appeal allowed by R.A. 1125 must be taken only against final ruling, orders and decisions of the CTA.

In the computation of the 30-day period prescribed under Sec. 11 of R.A. 1125, the motion or request for a reconsideration of the decision of the Collector of Internal Revenue suspends the running of the prescriptive period within which the taxpayer may appeal to the Tax Court, and the period should resume to run again the day following the receipt by the taxpayer of the Collector's denial to said motion or request for reconsideration.[80]

The claimant [81] may, within the statutory period of two years, proceed with his suit without waiting for the Collector's decision on the claim for refund. The petitioner should not have folded his arms and waited for the decision of the collector for its claim for refund, which was handed down after more than four years from payment, because the time for bringing an action for recovery of tax, fixed by statute, is not extended by the delay of the collector of internal revenue in giving notice of the rejection of such claim.

3. Liability of Government for Interest

In denying the motion for reconsideration filed by the government in the case of *Commissioner of Internal Revenue vs. Asturias Sugar Central* [82] in so far as the Court affirms the decision of the tax, fixed by statute, is not extended by the delay of the collector to the taxpayer, the court distinguished the case of the *Carcar Electric & Ice Plant Co. vs. Court of Tax Appeals* [83] and *St. Paul's Hospital of Iloilo.*[84] The Carcar case must be understood as holding the Collector of Internal Revenue liable for interest on taxes improperly collected only if the collection was attended with arbitrariness. The facts involved in the St. Paul's Hospital case do not seem to justify the conclusion that arbitrariness attended the collection of the taxes, the question in said case being whether or not sales of drugs and medicines made at the pharmacy department of the hospital were taxable was a fairly debatable issue. In the case at bar, the Court held that the petitioner had acted arbitrarily in rejecting the taxpayer's claim to the effect that the destruction of the Asturias Sugar Central in 1942 is compensable by the War Damage Corporation, and that the amount of the loss thus sustained by said taxpayer

[80] Collector of Internal Revenue v. Convention of Phil. Baptist Churches et al., *supra.*
[81] Koppel (Philippines) Inc. v. Collector of Internal Revenue, G.R. No. L-10550, September 19, 1961.
[82] G.R. No. L-15013. Dec. 28, 1961
[83] 68 O.G. 1058.
[84] G.R. L-12127, May 25, 1959

could be determined only in 1950 when it received a communication stating that the check enclosed therein would be the last payment for the loss of said Central. In other words, the assessment complained of is clearly unjustified and accordingly, the case falls within the purview, not of the St. Paul's case, but the case of Carcar Case. This decision reiterates the ruling laid down in the case of *Collector of Internal Revenue vs. Antonio Prieto et al.*[85] when in a similar motion for reconsideration, the Court held that the Collector had no reason to insist in collecting the inheritance tax from respondent on the basis of the value of the properties allotted to each of them, and therefore the collection of said taxes being unjustified.

[85] G.R. No. 11976, September 26, 1961.