RECENT PROBLEMS IN TAXATION

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Pursuant to specific provisions of the National Internal Revenue Code,[1] the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, shall promulgate all needful rules and regulations for the effective enforcement of the provisions of the said Code. For these rules and regulations, however, to be valid and to have the force and effect of law, they must be (1) useful, practical and necessary for the enforcement of the law; (2) reasonable; and (3) consistent or in harmony with the provisions of the law or the general purpose and objectives thereof.[2] They become then as binding upon all parties, as if they have been written in the law itself.[3] These "revenue regulations" so called, may include rules, instructions and regulations prepared and recommended by the Commissioner of Internal Revenue and promulgated by the Secretary of Finance for the guidance of the public in general as well as for the guidance of internal revenue matters handled by the Bureau of Internal Revenue.[4] Or as stated in one case, they are intended to explain the law unimplemented by prescribing regulations of administration and procedure. They may not, however, change the law nor embrace matters not covered nor intended to be covered by the law.[5] Moreover, the Secretary of Finance is vested with authority to revoke, repeal or abrogate the acts or previous rulings of his predecessors in office because the construction of a statute by those administering it is not binding on their successor if thereafter the latter becomes satisfied that different construction should be given.[6]

The next level of formal interpretative pronouncements in respect to revenue matters are those issued by the Bureau of Internal Revenue as "general circulars." These contain instructions and information for the guidance of internal revenue officers in general

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1 Secs. 4 and 338, Com. Act No. 466. The power can also be implied from Secs. 79-B and 551 of the Revised Administrative Code.

2 U.S. v. Grimaud, 22 U.S. 506; Interprovincial Auto Bus Co., Inc. v. Collector of Internal Revenue, 52 OG, No. 2, p. 791; U.S. v. United Verde Copper Co., 196 U.S. 207; U.S. v. Topasi Molina, 29 Phil. 119.

3 U.S. v. Topasi Molina, *supra;* Interprovincial Auto Bus Co. v. Collector, *supra.* See also Hilado v. Collector, 53 O.G, 2481.

4 General Circular No. 56, dated July 2, 1920.

5 Hilado v. Collector, *supra;* 12 CJS, pp. 845-846.

6 Association of Clerical Employees v. Brotherhood of Railway Steamship Clerks, 85 [2] 152, 109, A.L.R. 345; Hilado v. Collector, *supra.*

only, including rulings, precedents, opinions of the Secretary of Justice and the decisions of courts interpreting the rules and regulations enforced by the Bureau of Internal Revenue.[7]

Next to "general circulars" are the "rulings" of the Bureau of Internal Revenue which are made on stated facts usually involving problems common to a number of taxpayers. Generally issued upon requests of taxpayers on difficult or doubtful points of interpretation, they may also be secured for administrative interpretations of points of law affecting prospective or contemplated transactions, or on completed transactions which may or may not be involved in a tax return already filed. If the interpretations are of sufficient general interest, they may be published by the Bureau of Internal Revenue along with the answers given but without reference to the parties involved and with the factual situations slightly modified.[8] Taxpayers may generally rely upon these published rulings in determining the rule applicable to their own transactions if the facts and circumstances involved are substantially the same.[9] And since the Bureau is very jealous of the integrity of its rulings, it is less inclined to go back on them, and therefore, most business transactions can be based safely on such rulings.[10] This fact, however, does not prevent rulings from being modified or revoked despite their recent promulgation.

The weight accorded these administrative interpretations both by the Government and the taxpayers stresses the gravity of the problems that may arise from or attend their promulgation. Recently, problems in taxation have developed because of these interpretations made by the BIR general circulars and rulings of some provisions of the tax laws. Notably, these problems relate to the questions of whether—

(1) the terms "new mines" and "old mines" in Section 4 of Republic Act No. 909 refer only to the gold mining industry and do not include all classes of mining industries;

(2) inherited property which remains undivided after a period of more than ten (10) years, and is not under administration proceedings or held in trust, shall be considered as owned by an unregistered partnership under Section 84, and therefore, the income derived therefrom is subject to the corporate tax fixed in Section 24 of the Tax Code;

[7] General Circular No. 56, dated July 2, 1920.
[8] Benjamin N. Tabios, *Law on Taxation*, 1962 ed., p. 35-a.
[9] Rev. Rulings 54-172 (1954-1 CB 394) of the U.S. Internal Revenue Service.
[10] David W. Richmond, *How To Read a Ruling*, Taxes—The Tax Magazine, Dec. 1961, pp. 1054-1059.

(3) the interest on deficiency income tax prescribed by Section 51(d) of the Tax Code, as amended by Republic Act No. 2343, can be imposed and collected in respect to deficiency income taxes for 1959 and prior years which are assessed after June 20, 1959; and

(4) a franchise grantee is subject to the franchise tax rate of 5% in accordance with Section 259 of the Tax Code, as amended, or to the rate prescribed in the charter or franchise granted.

I. ALL MINES OR ONLY GOLD MINES?

Section 4 of Republic Act No. 909 provides:

> "Sec. 4. New mines, and old mines which resume operation, when certified to as such by the Secretary of Agriculture and Natural Resources upon the recommendation of the Director of Mines, shall be exempt from the payment of income tax during the first years of actual commercial production: *Provided*, That, any such mine and/or mines making a complete return of its capital investment at any time within the said period, shall pay income tax from that year."

BIR Ruling No. 62-0024, dated January 16, 1962, has opined that the terms "new mines" and "old mines" in the aforequoted provision of Section 4 refer only to the "gold mining industry" and were never meant to include all classes of mining industries. The reasons advanced by the Ruling are the following:

(a) The "explanatory note" to House Bill No. 3761 which became Republic Act No. 909 revealed that it specifically referred to the gold mining industry and it never mentioned any other kind or class of mine;

(b) The discussion in the House also pointed to gold mining companies as the only beneficiaries even on the exemption from income tax;

(c) It is a principle of statutory construction that "grants of tax exemptions are given a rigid interpretation against the assertions of the taxpayer and in favor of the taxing power," and, therefore, considering this basic rule of statutory construction, the exemption would refer *only* to gold mines and to no other mining industries;

(d) General Circular No. V-160, promulgated by this Bureau on July 1, 1953 has already interpreted Section 4 to cover only the gold mining industry; and,

(e) Sections 4 and 5 of Republic Act No. 909 are not covered or embraced within the title and explanatory note to the bill, thereby raising a constitutional issue which may as well be settled by the Court if the assessments on corporations engaged in mining industries, other than gold mining, are given due course.

The foregoing reasons are untenable for being based on wrong premises.

(a) *Explanatory note—*

The considerable reliance placed on the explanatory note accompanying the *original* version of Act No. 3791 (now Rep. Act No. 909) seems to be misplaced and erroneous.

As originally introduced, H. No. 3791 provided only for four sections, namely, Sections 1 and 2, to amend Sections 242 and 243 of the Tax Code by totally exempting gold from the payment of royalties and ad valorem taxes; Section 3, to repeal Section 244 of the Tax Code; and Section 4, the usual effectivity clause.

Since the portions in Sections 242 and 243 to be affected by the *original* bill referred only to the gold mining industry, the accompanying explanatory note naturally referred only to gold. However, during the consideration of the bill, substantial amendments were introduced and *new* provisions inserted into the bill, namely:

1. *Amendments.*—Instead of *totally exempting* gold from the payment of royalties and ad valorem taxes, the amendments to the bill subjected gold to the uniform 1½ rate of royalty and ad valorem taxes being imposed on other minerals, thereby rejecting the proposed preferential treatment to be given to gold over other minerals and accepting the plea of the gold industry that it be placed on equal status with the other mining industries as regards the imposition of royalty and ad valorem taxes.[11]

2. *New Provisions.*—*New mines* and *old mines* which resume operation were exempted from the payment of income tax during the first three (3) years of actual commercial production under certain conditions;

3. All articles imported by *gold mining* companies to be used in the operations of gold mining companies were also exempted from payment of tax for the period of three (3) years.[12]

The annotations on Republic Act No. 909 will readily support the observations made:

Contained in the Original Bill—

Section 1. Paragraph (b) of section two hundred and forty-two of Commonwealth Act Numbered Four hundred and sixty-six is hereby amended to read as follows:

[11] Congressional Record No. 60, May 5, 1953, pp. 9-10; see also Gen. Circular No. V-160, dated July 1, 1953.
[12] Inserted during May 14, 1953 session, Congressional Record No. 67.

"(b) Royalties

"(1) On coal, such royalties as may be specified in the lease, which shall not be less than ten centavos per ton of one thousand and sixteen kilograms.

Amendment on the floor—

"(2) On gold, a royalty of one and one-half per centum of the actual market value of the annual gross output thereof.

Contained in the Original Bill

"(3) On all other minerals, extracted from, or mineral products of, mineral lands of the first, second, fourth, and fifth groups as provided for in the Mining Act, a royalty of one and one-half per centum of the actual market value of the gross output thereof.

"'Before the minerals or mineral products are removed from the mines, the Collector of Internal Revenue or his representatives shall first be notified of such removal on a form prescribed for the purpose.

"The rentals and royalties at the rates herein established or at such rates as hereafter may be prescribed by law shall be paid by the lessee and a provision to this effect shall be deemed to be a part of every contract of lease covering the mineral lands and mineral products referred to in this section."

"Sec. 2. Section two hundred and forty-three of Commonwealth Act Numbered Four hundred and sixty-six is also amended to read as follows:

Amendment on the floor

"Sec. 243. Ad valorem taxes on output of mineral lands not covered by lease.—There shall be assessed and collected on the actual market value of the annual gross output of the minerals or mineral products extracted or produced from all mineral lands, not covered by lease, an ad valorem tax, payable to the Collector of Internal Revenue, in the amount of one and one-half per centum of the value of said output.

"Before the minerals or mineral products are removed from the mines the Collector of Internal Revenue or his representatives shall first be notified of such removal on a form prescribed for the purpose."

Contained in the Original Bill

Sec. 3. Section two hundred and forty-four of Commonwealth Act Numbered Four Hundred and sixty-six is repealed.

Amendment on the floor. These two sections were missing in the Original Bill. Introduced wholly on the floor. Sec. 4 deals on all mines. Sec. 5 specifically mentions only gold mines.

Sec. 4. New mines and old mines which resume operation, when certified to as such by the Secretary of Agriculture and Natural Resources upon the recommendation of the Director of Mines, shall be exempt from the payment of income tax during the first three years of actual commercial production: Provided, That, any such mine or mines making a complete return of its capital investment at any time within the said period, shall pay income tax from that year.

Sec. 5. Notwithstanding the provisions of section one hundred and eighty-six of the Internal Revenue Code and section one of Republic Act Numbered Six hundred and one, known as the Foreign Exchange Tax, all articles imported by gold mining companies which will be used in the operation of the said mining companies are exempt from tax: Provided, That these exemptions shall apply during a period of three years.

Sec. 6. This Act shall take effect upon its approval.

Approved, June 20, 1953.

The foregoing shows the patent unreliability of the explanatory note as an extrinsic aid to the construction of Section 4 of Republic Act No. 909.

The explanatory note, to repeat, was limited in its scope to gold mines because the *original* bill covered only gold mines, and provided for the exemption of gold from the graduated royalty and ad valorem taxes. It could not have referred to exemption from income tax (Sec. 4) and from the payment of taxes for importation of articles needed by the mining companies (Sec. 5) because these were not parts of the original bill but were introduced as new provisions during the later part of its consideration. And while the original bill and its accompanying explanatory note would place gold in a preferred position over all other minerals by granting it exemptions from ad valorem and royalty taxes, the bill as approved *rejected* this intent and instead granted to the gold industry mere equality of treatment with other minerals by subjecting it to the uniform royalty and ad valorem tax rate of 1½% of the actual market value of its gross output.

The bill as amended and approved is, therefore, very much different from that originally introduced and the explanatory note accompanying it could not be used to construe the real later intent of Congress reflected in the approved bill with its new provisions and substantial amendments incorporated therein.

(b) *Congressional discussion*—

BIR Ruling No. 62-0024 also relies on the discussion of the bill in the floor of the House to show that gold mining companies are the only intended beneficiaries. However, said discussion was made in the session of May 5, 1953.[13] The inserted provision of Section 4 as an amendment to the bill was made on May 14, 1953.[14] The discussion of May 5, 1953, therefore, could furnish no basis at all for the interpretation of Section 4 which was introduced ten (10) days later, and which was then not in the minds of the legislators.

(c) *Principle of Statutory Construction.*—

The BIR Ruling resorts to the principle of statutory construction "that grants of tax exemption are given a rigid interpretation

[13] See note 11.
[14] See note 12.

against the assertions of the taxpayer and in favor of the taxing power." But this is not a fixed and absolute rule to be followed in all cases. It is a rule which is applicable only in cases of substantial doubt, and not when the meaning and intention of the legislature are plainly expressed or indubitably discoverable, in which case the latter must prevail regardless of the character of the statute or the view which the interpreter may take of it.[15]

The provisions of Section 4 are clear and explicit. The only problem of statutory interpretation involved is what are "new mines" which have resumed operation. This, however, Section 4 also has solved by authorizing the Secretary of Agriculture and Natural Resources to determine and certify them as such, upon the recommendation of the Director of Mines.

This being the case, the general rule in the interpretation of statutes levying taxes or duties applies, namely, not to extend their provision beyond the clear import of the language used; and that in case of doubt, such statutes are construed most strongly against the Government and in favor of the citizen because burdens are not to be imposed nor presumed to be imposed beyond what the statutes expressly and clearly import.[16]

(d) *General Circular No. V-160, dated July 1, 1953—*

General Circular No. V-160, it is true. has construed Section 4 to cover only gold mining industry.

But a circular which is clearly erroneous cannot be the basis of any authority to assess and collect. For if it is unreasonable and it conflicts with the plain language of the statute, the latter prevails, and the administrative regulation serves no aid at all as an extemporaneous or practical construction in interpretation.[17]

Furthermore, the conclusiveness of a contemporaneous or practical construction like the General Circular at hand, depends on the following elements: (1) that the interpretation originated from a reliable source; (2) that it has continued for a long period of time and received wide acceptation; and (3) that such interpretation was made at or near the time of the enactment of the statute.[18]

While it may be admitted that the first and third elements are present in the instant circular, the second appears to be obviously

[15] Black on Interpretation of Laws, 2nd ed., p. 477.
[16] MRR Co. v. Collector of Customs, 52 Phil. 590.
[17] Koppel v. Yatco, 77 Phil. 496; Wise & Co., Inc. et al. v. Meer, G.R. No. L-48231, June 30, 1957.
[18] Sutherland, Statutory Construction, Sec. 5104, p. 515.

lacking, considering that on January 7, 1956, or three years after General Circular No. V-160 was issued, the Bureau of Internal Revenue *granted* the request of a certain mining company for exemption from income tax pursuant to Section 4 of production of copper, and *not* gold, thereby clearly indicating that the Bureau considered in that particular case that Section 4 refers not only to gold mining companies.

Moreover, under Section 4 of Republic Act No. 909 it is the Secretary of Agriculture and Natural Resources who is explicitly authorized to certify whether new mines or old mines fall within the classification of mines dealt in Section 4. The consistent stand of the Secretary of Agriculture and Natural Resources in considering *all* mines and not only gold mining as falling within the coverage of Section 4 is a contemporaneous and practical construction invaluable in the resolution of the instant problem posed, being the official exclusively charged with the enforcement and implementation of the mining laws.

e) *Sections 4 and 5 not covered by title and explanatory note*—

The argument in the BIR ruling that Sections 4 and 5 are not covered by the title and the explanatory note refutes, rather than supports its own conclusion. If, as contended, the provisions of Sections 4 and 5 are not covered by the title of the bill, then even the view of the Bureau that gold mining companies are entitled to the exemptions provided therein would then have no legal basis at all, as these two sections would then be void.[19]

While the constitutional provision has been held to be mandatory, and that failure to comply with it will render the statute or part thereof void, it should not be so strictly construed as to cripple or hamper proper legislation.[20] For one thing, the title is not required to be an index to the contents of the act, nor to set out in detail the specific provisions of the statute. The constitutional requirement is satisfied if the title fairly indicates the general subject dealt with in the act so as to give sufficient notice of its purpose to the legislator and the persons likely to be affected thereby.[21]

An examination of the whole law, however, indicates that the argument is not sustainable.

The title of the bill as approved (now Republic Act No. 909) reads: "An Act to Amend Sections Two Hundred and Forty-two and Two Hundred and Forty-three and to Repeal Section Two Hun-

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[19] Central Capiz v. Ramirez, 40 Phil. 889.
[20] Chicago v. Excise Board of Stephens County, 168 Okl 523, 34 P(2d) 268.
[21] People v. Wohlford, 197 N. W. 558.

dred and Forty-four of Commonwealth Act Numbered Four Hundred and Sixty-four, otherwise known as the National Internal Revenue Code."

Sections 242 and 243 amended by Republic Act No. 909 deal in *all* mineral lands and mineral products. The legislators and those affected thereby could not have been taken by surprise that provisions like those embodied in the present Sections 4 and 5 have been included. Both of them refer also to mines (Sec.4) and to gold mining companies (Sec. 5).

Premises considered, it is respectfully submitted that Section 4 of Republic Act No. 909 extends its benefits to *all* mining industries, and not only to the gold mining industry. More specifically, the reasons are the following:

1) The provisions of said Section 4 clearly refer to all new and old mines which resume operation when certified to as such by the Secretary of Agriculture and Natural Resources, upon the recommendation of the Director of Mines.

Note should be taken of the fact that Republic Act No. 909 specifically mentions gold (Sec. 1) or gold mining companies (Sec. 5) when it desires to so make its provisions apply to them. In its Section 4, however, no mention of gold or gold mines is made, the obvious intent being to make its provision apply to all mines or mining industries.

It is well-settled that when the law does not distinguish, neither should we. If the meaning of any particular section standing alone is clear, no other section or part of the act may be applied to create doubt.[22]

2) To uphold BIR Ruling No. 62-0024 dated January 25, 1962 and General Circular No. V-160 dated July 1, 1962, limiting the terms "new mines" and "old mines" to gold mining companies would afford to the gold mining companies a preferential position over other mining industries which is contrary to the legislative intent of treating uniformly all the minerals — gold or otherwise — the very equality of treatment that the gold industry itself sought in the first instance.

Significantly, the only preferential treatment accorded gold mining companies is that embodied in Section 5 of Republic Act No. 909, and this section, it is to be noted, expressly so provides that only gold mining companies should enjoy the exemption.

[22] Sutherland, Statutory Construction, Vol. I, 342, par. 4801.

3) Both the BIR Ruling and General Circular cannot prevail over the clear provisions of Section 4. Based as they were on wrong premises — the explanatory note and the lone discussion in the House before the provisions now contained in Section 4 had been introduced—they are not useful as aids to the construction and interpretation of said section. Attention is also invited to the fact that the Bureau had previously granted a request for exemption under Section 4 made in 1956 by a certain mining company which produced copper, and not gold.

On the other hand the contemporaneous and practical construction placed by the Secretary of Agriculture and Natural Resources upon Section 4 as referring to all mining industries is entitled to great weight considering that under Section 4, for the new mines and the old mines which resume operation to be exempted from the payment of income tax, it is the certification of such official which is expressly required as a condition precedent thereto.

A judicial determination of the legal problem presented should be sought, considering that the Bureau has recently reiterated its Ruling No. 62-0004, placing reliance again on General Circular No. V-160.[23]

II. CO-OWNERSHIP OR PARTNERSHIP?

For income tax purposes, Section 84(b) of the Code defines a corporation as follows:

> "Sec. 84. When used in this Title—
>
> (b) The term 'corporation' includes partnerships, no matter how created or organized, joint-stock companies, joint accounts (cuentas en participacion), associations or insurance companies, but does not include duly registered general copartnerships (compañias colectivas)."

And Section 24 of the same Code, in prescribing the rate of corporate income tax, provides in part as follows:

> "Sec. 24. *Rate of tax on corporations.*—(A) In general, there shall be levied, assessed, collected, and paid annually upon the total net income received in the preceding taxable year from all sources by every corporation organized in, or existing under the laws of the Philippines, no matter how created or organized, but not including duly registered general copartnerships (compañias colectivas), domestic life insurance companies and foreign life insurance companies doing business in the Philippines, a tax upon such income equal to the sum of the following: * * *"

[23] BIR Ruling, dated April, 1962, holding that mines producing iron ores instead of gold, are not deemed covered within the exemption provisions of Rep. Act No. 909.

The BIR rulings in implementation of the aforesaid provisions of law, are to the effect —

a) That inherited property which remains undivided after a period of more than ten (10) years, no attempt at all having been made to divide among the co-heirs, and the property is not under administration proceedings or held in trust, shall be considered as owned by an unregistered partnership and, therefore, the income derived from said property is subject to the corporate income tax fixed in Section 24 of the Tax Code.[24]

b) That "properties held by co-heirs which are income producing or profit-earning, except those belonging to duly registered copartnership *** shall be considered as owned by unregistered partnerships and the income derived therefrom shall be subject to the payment of corporate income taxes".[25]

c) That Taxpayers who borrowed money from their father, which amount together with their personal monies was used by them as a common fund for the purpose of buying several lots and then leasing them separately to several persons are deemed to have formed a partnership under Section 84 and therefore taxable under Section 24 of the Tax Code.[26]

BIR Rulings no longer controlling—

The Court of Tax Appeals in the *De Leon v. The Commissioner, Bureau of Internal Revenue* case[27] has already held the aforestated rulings of the Bureau erroneous.

On the first ruling, the Court held:

"* * * as far as we know, there is no law that requires heirs or co-owners of inherited properties without anyone of them asking for it or without any agreement to the contrary (Article 494 New Civil Code) to partition among themselves within a specific period of time the properties acquired by inheritance or held in co-ownership. Article 494 of the New Civil Code must have foreseen the impossibility or impracticability of immediate partition in some instances to the extent that it allows co-ownership to exist by agreement for a period not exceeding ten (10) years subject to extension by a new agreement. The same article gives donors or testators the right to prohibit partition for a period which shall not exceed twenty (20) years. If we were now to give sanction to the theory of respondent that all co-ownerships, whether by co-heirs or not, are un-

[24] BIR Ruling No. 406, S. 1959; see also BIR Ruling No. 631, Dec. 4, 1959.

[25] Quoted in De Leon, *et al.* v. The Commissioner, Bureau of Internal Revenue, *et al.*, CTA Case No. 738, prom. Sept. 11, 1961.

[26] BIR Ruling No. 136, March 20, 1959; see also BIR Ruling, dated April, 1962, citing Evangelista, *et al.* v. The Collector of Internal Revenue, G.R. No. L-9996, October 15, 1957.

[27] CTA Case No. 738, prom. Sept. 11, 1951.

registered partnerships and therefore subject to an additional income tax burden, we would in effect render without meaning and much too burdensome for co-owners, donors and testators to avail themselves of the rights accorded them under the aforesaid article of the New Civil Code, irrespective of whether or not their intention to continue with the co-ownership is just for the purpose of rehabilitating, maintaining and preserving what they already own in common or for business and further expansion."

On the second ruling, the Court was explicit to the point that:

"We believe that the interpretation given by the respondent to the term 'corporation' as defined in Section 84(b) of the Tax Code as to embrace without exception all possible co-ownerships over inherited properties which are income producing is much too unreasonable and stringent. Co-heirs who own properties which produce income should not automatically be considered partners of an unregistered partnership, or a corporation, within the purview of the income tax law. To hold otherwise, would be to subject the income of all co-ownerships of inherited properties to the tax on corporations, inasmuch as if a property does not produce any income at all, it is not subject to any kind of income tax, whether the income tax on individuals or the income tax on corporations. In short and in effect, to adopt the view of the Commissioner of Internal Revenue, would be tantamount to declaring that all co-ownerships, whether by co-heirs or not, are unregistered partnerships which in some particular instances might lead to unfair consequences. Certainly, the word 'co-ownership' has a separate and distinct meaning from the term 'partnership'."

The Court of Tax Appeals decision in the *De Leon* case does not by all means conclude the question. While it may be controlling in that it has not been appealed to the Supreme Court, this fact does not preclude subsequent assessments being imposed on other co-ownerships, risking a reaffirmation of the *De Leon* decision of the Court of the Tax Appeals, and then appealing to the Supreme Court with the hope that a contrary doctrine be enunciated on the legal problem posed.[28]

The difference in tax liability is by no means insignificant. In co-ownership, the co-owners can file their individual income tax returns and pay their corresponding share of the income tax. In co-partnership, corporate income taxes at rates prescribed in Section 24 of the Tax Code will have to be paid, as well as the residence tax for corporation pursuant to Section 2 of Commonwealth Act No. 465. And if the taxpayers in partnership habitually engage in leasing properties, they are also subject to the tax imposed on real estate dealers provided in Section 193(q) of the Tax Code.[29]

[28] Sec. 18, Rep. Act No. 1125—An Act Creating the Court of Tax Appeals. Said section allows the Commissioner of Internal Revenue to file an appeal from an adverse decision of the Court of Tax Appeals to the Supreme Court.

[29] Evangelista, *et al.* v. Collector of Internal Revenue, *et al.*, G.R. No. L-9996, October 15, 1957.

Should a case involving the same facts arise, these questions would still have to be clearly resolved —

1) Does the term "corporation" as defined in Section 84(b) of the Tax Code, embrace without exception all possible co-ownerships on inherited property which are income producing or profit?

It is true that the Court of Tax Appeals in the *De Leon* case had qualifiedly ruled in the negative.[30] But the Supreme Court in the case of *Evangelista v. Collector of Internal Revenue* [31] has not adequately considered this particular point. Rather it dwelt lengthily on the connotation of the terms "corporation" and "partnership" as defined in Section 84(b) of the Tax Code. It even carried the statement that for the purposes of the Tax Code, a partnership includes not only a partnership as understood in common law but, as well, a syndicate, group, pool, joint venture, or other unincorporated organization which carries on any business, *financial* operation or venture. The only exception it recognizes is that of a duly registered general partnership, which the Tax Code itself expressly removes from the purview of the term "corporation."

2) Does a co-ownership fall under the terms "or other unincorporated organization" or "joint venture"?

Here again, the Supreme Court in the *Evangelista* case and the Court of Tax Appeals in the *De Leon* case, have not met in clear agreement.

The *Evangelista* case, in overruling the contention of taxpayers therein that they were mere co-owner, and not partners, held—

"To begin with, the tax in question is one imposed upon 'corporations,' which, strictly speaking, are distinct and different from 'partnerships.' When our Internal Revenue Code includes 'partnerships' among the entities subject to the tax on 'corporation,' said Code must allude, therefore, to organizations which are *not necessarily* 'partnership,' in the technical sense of the term. Thus, for instance, section 24 of said Code *exempts* from the aforementioned tax 'duly registered general partnership,' which constitute precisely one of the most typical forms of partnerships in this jurisdiction. Likewise, as defined in section 84(b) of said Code, 'the term corporation includes partnerships, *no matter, how created or organized.* This qualifying expression clearly indicates that a joint venture need

[30] The same decision also declared when the broad definition in Sec. 84(b) of the Tax Code should apply. It said:
"* * *. Undoubtedly, if the sole purpose of the co-heirs for maintaining in perpetuity their co-ownership over the inherited estate is to *see it expand beyond limit by embarking* in all *kinds of business ventures,* then the application of said sections of the Tax Code and the ruling of the Supreme Court in Eufemia Evangelista, *et al.* v. The Collector of Internal Revenue, *et al.* (54 O.G. 996) would be in order."

[31] *Supra* note 29.

not be undertaken in any of the standard forms, or in conformity with the usual requirements of the law or partnerships, in order that one could be deemed constituted for purposes of the tax on corporations. Again, pursuant to said section 84(b), the term 'corporation' includes, among others, 'joint accounts (*cuentas en participacion*),' and 'associations,' *none of which has a legal personality of its own, independent of that of its members.* Accordingly, the lawmaker could not have regarded that personality as a condition essential to the existence of the partnerships therein referred to. In fact, as above stated, 'duly registered general co-partnerships'—*which are possessed of the aforementioned personality*—have been expressly excluded by law (sections 24 and 84[b]) from the connotation of the term 'corporation.' It may not be amiss to add that petitioners' allegation to the effect that their liability in connection with the leasing of the lots above referred to, under the management of one person—even if true, on which we express no opinion—tends to *increase* the similarity between the nature of their venture and that of corporations, and is, therefore, an additional argument in *favor* of the imposition of said tax on corporations."

Note, however, the Court of Tax Appeals' ruling in the *De Leon* case—

"While it is true that the definition of the term 'corporation' as given in Section 84(b) of our Tax Code is broader in scope and far more embracing than the ordinary definition of a corporation found in Section 2 of Act No. 1459, otherwise known as the Corporation Law, we still believe and so hold that on grounds of fairness and equity, the respondent should not apply the broader definition of the Tax Code indiscriminately so as to embrace within the definition all classes of co-ownership irrespective of the underlying reason or reasons for their creation and existence. x x x there are instances when co-ownership over inherited properties is kept at *status quo* for years through no liking of the co-owners or co-heirs but made so by some legal impediment as in the instant case where the petitioners *jointly* and *solidarily* agreed to give a life annuity of 1,609 cavanes of palay produced from their inherited hacienda in San Miguel, Bulacan, to their co-heir, Asuncion Soriano, who is still living at present. x x x To cite other specific instances. There are heirs who choose not to partition the estate left by their parents not for financial aggrandizement but for purely sentimental reasons and to maintain as closely knit as possible their family ties after the death of their ascendants. The family is a basic social institution which public policy cherishes and protects. (Art. 216 New Civil Code). Others do so for practical reasons believing that with the estate left undivided, particularly small estates with numerous heirs, the expenses of administration could be considerably minimized and the obtaining of credit facilities for operational expenses made easier. Others find it simply impossible—physically and legally—to partition, much as they would want to, as is the case of numerous heirs inheriting an estate consisting let us say just one commercial building or an ancestral home being leased to a third party where none of the heirs is willing to sell his undivided share to his other co-heirs or to outsiders.

'lex non intendit aliquid impossible.' Under Article 10 of the New Civil Code, in case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail."

Of course distinctions could be drawn between the *Evangelista* case and the *De Leon* case. Thus as pointed out in the *De Leon* case—

"1. In the Evangelista case, the 'common fund was not something they found already in existence. It was not a property inherited by them *pro indiviso*. They created it purposely. What is more, they jointly borrowed a substantial portion thereof in order to establish said common fund.' In the instant case, the common fund was already in existence when the petitioners became the co-owners of the same. They did not create the fund but merely inherited the same from their father. The petitioners herein never borrowed money in order to establish or to add to the common fund.

"2. In the Evangelista case, the taxpayers therein 'invested the same (i.e., the common fund), not merely in one transaction, but in a series of transactions. x x x The number of lots (24) acquired and transactions undertaken, as well the brief interregnum between each, particularly the last three purchases, is strongly indicative of a pattern or common design that was not limited to the conservation and preservation of the aforementioned common fund.'

"In the case under consideration, all the actions of the petitioners were limited merely to the conservation and preservation of the inherited properties. They never contributed even a single centavo from their own pockets in order to invest the same. Whatever they received from their late father was already invested. And instead of adding to their co-ownership, they sold some of their inherited properties;

"3. In the Evangelista case, the co-owners against whom the disputed assessments for corporate income taxes were issued, were Eufemia, Manuela, and Francisca, all surnamed Evangelista, and 'the properties have been under the management of one person, namely, Simeon Evangelista,' who was not one of the co-owners. "Thus the affairs relative to said properties have been handled as if the same belonged to a corporation or business enterprise operated for profit.' In the present case, the petitioners are not merely co-owners but co-heirs, and the properties which they inherited were jointly managed by co-owners Jose P. de Leon and Cecilio P. de Leon, two of the three petitioners in this case; and

"4. In the Evangelista case, the taxpayers therein 'have not testified or introduced any evidence, either on their purpose in creating the set up already adverted to, or on the causes of its continued existence. They did not even try to offer an explanation therefor.' In the case at bar as stated above, the petitioners did not create the 'set-up.' It was created and established by the death of their father. And they explained to the satisfaction of this court the cause for the continued existence of the co-ownership of the inherited properties, i.e., the subsisting *joint* and *solidary* obligation of the petitioners to deliver annually 1,600 cavanes of palay, from the records of the case, it appears that the petitioners are having hard time to comply with."

Verily, another judicial interpretation, this time by the Supreme Court, should be most welcome.

III. OLD INTEREST OR NEW INTEREST (Sec. 51(d), Tax Code)

Section 51(d) of the Tax Code, as amended by Republic Act No. 2343 on June 20, 1959, provides:

> "*Interest on Deficiency.*—Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be collected as a part of the tax, at the rate of six per centum per annum from the date prescribed for the payment of the tax (or, if the tax is paid in installments, from the date prescribed for the payment of the first installment) to the date the deficiency is assessed: Provided, that the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding."

General Circular No. V-318, in construing the above quoted provision, has opined that—

> "The interest on deficiency income tax at the rate of ½% per month (or 6% per annum), as prescribed in section 51(d) of the Tax Code, as amended by Republic Act No. 2343, shall be imposed and collected in respect to deficiency income taxes for 1959 and prior years which are assessed after June 20, 1959. However, in such a case the said interest shall be imposed only from June 20, 1959 until the date the deficiency tax is assessed."

Note is to be taken that General Circular V-138 would make the amendment retroactive to years even before the enactment of Republic Act No. 2343 on June 20, 1959. Under such an interpretation, the interest on deficiency income tax rate of ½% per month (or 6% per annum) as prescribed in Section 51(d), as amended, shall be imposed and collected in respect to deficiency income taxes for 1958 and *prior* years which are assessed after June 20, 1959, although in such a case the said interest shall be imposed only from June 20, 1959 until the date the deficiency tax is assessed. The following illustration will clarify the Bureau's interpretation—

> The income tax return for 1958 was filed on or before March 1, 1959 and the taxpayer paid the tax as shown in the return upon assessment and demand for the payment thereof. However, upon investigation it was ascertained that the taxpayer filed a false or fraudulent return and

found liable for deficiency income tax for 1958 in the sum of ₱500.00. The assessment for the said deficiency income tax was issued on April 20, 1960, giving the taxpayer until May 20, 1960 within which to pay the amount assessed. In such a case, the interest on deficiency at the rate of ½% per month (or 6% per annum), as prescribed in Section 51(d) of the Tax Code, as amended by Rep. Act No. 2343, shall be imposed and collected from June 20, 1959 to April 20, 1960 and the amount due as interest on deficiency shall be included in the assessment notice, computed as follows:

Deficiency income tax for 1958	₱500.00
50% surcharge under Sec. 72 for filing false or fraudulent return	250.00
½% monthly interest on deficiency under Sec. 51(d) of the Tax Code, as amended by Rep. Act No. 2343, from May 20, 1959 to April 20, 1960 (Based on ₱500.00)	25.00
Amount shown in the assessment issued on April 20, 1960 and payable on or before May 20, 1960	₱775.00 [32]

The error and inequity of the circular lies in the fact that while the amendatory law—Republic Act No. 2343—does not show any clear indication of making its amendment of Section 51(d) retroactive, the circular would so make it definitely apply to taxable years before the enactment of said Republic Act which were and should be governed by Section 51(d) before its amendment.

Before the amendment, the only interest in income tax was the interest of 1% a month (or 12% per annum) for late payment as prescribed in Section 51(e) of the Tax Code.[33] Moreover, the former Section 51(d) did not impose any interest on deficiency from the return due date but only from the date specified in the deficiency assessment notice and demand. The amendment has changed this and now imposes a ½% monthly interest from the return due date to the date of the notice and demand.

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[32] Illustration copied from Jose P. Alejandro, *The Law on Taxation,* 1961 ed., p. 160.

[33] See 51(e). *Additions to the tax in case of non-payment.*—(1) Tax shown on the return.—Where the amount determined by the taxpayers as the tax imposed by this Title or any installment thereof, or any part of such amount or installment thereof, or any part of such amount of installment, is not paid on or before the date prescribed for its payment, there shall be collected as part of the tax, interest upon such unpaid amount at the rate of one per centum a month from the date prescribed for its payment until it is paid: Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period of three years, the present provisions regarding prescription to the contrary notwithstanding.

Precedents may be cited to support the view that an amendment to a tax statute or provision is generally prospective and affects only taxable years after the enactment of the amendment.

Thus, in *Crown Willamette Paper Co. v. McLaughlin,*[34] and in *Jackson Furniture Co. v. McLaughlin,*[35] the courts were confronted with the similar issue of what interest provision should apply—that fixed in Section 250(e), 1082, approved in 1918, which provided—

> "Sec. 250(e), 40 Stat. 1982.—If any tax remains unpaid after the date when it is due, and for 10 days after notice and demand by the Collector, then, except in the case of estates of insane, deceased, or insolvent persons, there shall be added as part of the tax the sum of 5 per centum on the amount due but unpaid plus interest at the rate of 1 per centum per month upon such amount from the time it became due. x x x"

or that imposed in Section 283(h), approved in 1926, which provided—

> "Sec. 283(h). x x x interest shall be collected at the rate of 6 per centum per annum from the date of enactment of this Act up to the date of notice and demand from the Collector."

The Courts held that the interest imposed in Section 250(e) should apply and that the later enactment of Section 283(h) of the Revenue Act of 1926 did not replace or supersede the provisions of Section 250(e) of the Revenue Act of 1918.[36]

The Circular also either overlooked or ignored the substantive fact that among the changes effected by the amendments to Section 51 is the introduction of the "pay as you file system," under which the taxpayer himself computes the tax on the basis of the figures appearing in his income tax return and is required to pay the tax upon filing of the return. This amendment is expressly provided for in subsection (a), paragraph (1), of Section 51.

In other words, before the present amendment, the Commissioner of Internal Revenue was required to assess the tax due and notify the taxpayer thereof, after the amendment, the taxpayer assesses himself, files his return upon filing thereof. The legislative intent on the matter is clearly indicated by the fact that the provisions of subsection (a) of section 51, before it was amended by Republic Act No. 2343, entitled "Assessment of Tax," were totally eliminated in the present amendment and substituted with a new

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[34] 79 F2d 662.

[35] 85 F2d 606.

[36] See Demosthenes B. Gadioma, *Tax Problems: Capital Investment and Interest on Deficiency,* Tax Magazine, Vol. 1, No. 1, No. 5, August, September, 1962, p. 243.

subsection (a), entitled "Payment of tax," with entirely new provisions.

As correctly pointed out by a tax expert [37]—

> "In amending Sec. 51, Tax Code, Rep. Act No. 2343 introduced here a new collection device known as the 'pay as you file' or self-assessment system to replace the old system. The ½% interest on deficiency from return due date to date of assessment notice and demand is peculiar to and in harmony only with the pay-as-you-file system. To apply it to the old system under which the taxpayer had no obligation to pay tax he computed before receiving the assessment from the Collector, let alone any interest, would effect incongruous results not intended by Congress. The ½% interest simply could not fit into the old system.
>
> "Aside from this, to require taxpayers to pay said interest would be to burden them, by legislative fiat, with an obligation that never legally existed. This is patently against the elementary principles of justice and equity, if not squarely against the due process clause of our Constitution."

IV. FIVE PER CENT OR RATE FIXED IN FRANCHISE?

Section 259 of the Tax Code, as amended by Republic Act No. 39 on October 1, 1946 and later on by Republic Act No. 418 on June 18, 1949, reads as follows:

> "There shall be collected in respect to all *existing and future franchises,* upon the gross earnings or receipts from the business covered by the law granting the franchise a tax of *five* per centum or such taxes, charges, and percentages as are *specified in the special charters of the grantees upon whom such franchises are conferred, whichever is higher, unless the provision thereof preclude the imposition of a higher tax.* For the purpose of facilitating the assessment of this tax, reports shall be made by the respective holders of the franchise in such form and at such times as shall be required by the regulations of the Department of Finance." (Emphasis supplied).

Not quite a confusion has arisen from the problem of whether a franchise grantee is subject to the franchise tax rate of 5% in accordance with the aforequoted provision of Section 259 of the National Internal Revenue Code, as amended, *or* to the rate prescribed in the franchise.

In the column "Tax Digest" appearing in the *Internal Revenue Courier* [38] the following actual legal problem was posed—

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[37] *Ibid.*
[38] Vol. I, No. 4, April, 1962.

"Whether a franchise grantee is subject to the franchise tax rate of 5% in accordance with Section 259, Tax Code, as amended, or to the rate of 2% prescribed in its charter (Act No. 3215, as extended by Rep. Act No. 255), covering the neriol from January 1, 1953 to June 30, 1959."

The facts of the legal problem were recited as follows—

"Mr. 'A' (Franchise Grantee) was granted a franchise under Act No. 3215 to establish and operate an electric plant for a period of 25 years. The term of the franchise was supposed to have expired on December 6, 1949. Before the franchise expires, on June 14, 1949, Congress passed Republic Act No. 255, extending its existence for another 25 years, to be computed from the date of its expiration 'under the same terms and conditions' provided in Act No. 3215.

"The pertinent terms and conditions of the franchise under Act No. 3215, appears under Sections 8 and 11, which provide as follows—

> 'Section 8 "x x x Provided, That in consideration of the franchise hereby granted, his successors, or assigns shall pay quarterly into the municipal treasurer of Daet one per centum of the gross earning of their business during the remaining fifteen years, of the life of this franchise."
>
> 'Section 11. "This franchise is granted with the understanding upon the condition that it shall be subject to the amendment, alteration, or repeal by the Philippine Legislature," x x x' "

Based upon these facts, the Bureau of Internal Revenue opined—

"It may be noted that the provision of Section 8 of Act No. 3215 as quoted above, does not contain on exemption clause or a provision precluding the imposition of a higher rate of tax. On the other hand, Section 11 thereof, expressly provides that the franchise shall be subject to amendment, alteration or repeal by the 'Philippine Legislature' (now Congress of the Republic of the Philippines). Such being the case, the prescribed rate of 5% franchise tax in Section 259, Tax Code, as amended, would necessarily apply in view of the ruling laid down by the Supreme Court in Hoa Hin Co., Inc. cases, G.R. No. L-9616 and L-11783, prom. on May 25, 1959, and in the case of Lealda Electric Co., Inc. decided by the Court of Tax Appeals on November 2, 1959, C.T.A. Case No. 613.

"We are not unaware and there is no question as to the pertinent ruling of the Supreme Court in the case of Mercedes Hilario Vda. de Hidalgo *et al.* v. Saturnino David, Collector of Internal Revenue, G.R. No. L-8046, prom. on August 30, 1956 which says—

> " 'Inasmuch as the life of the franchise was extended by Republic Act No. 255, from twenty-five (25) years to fifty (50) years, said portion of Act No. 3215 should be construed as if it had been amended to provide that x x x the grantee, his successor or assign shall pay x x x one per centum of the gross earnings of their business during the first ten (10) years, and two per centum during the remaining thirty-five years of life of this franchise; x x x'

"'It will be noted, however, that the Supreme Court did not rule on the effect of the absence of an exempting clause of Act No. 3215 as extended by Rep. Act No. 255. This is so because this important question was never squarely raised as an issue at the time the above-cited case was heard in court. This vacuum created in the Supreme Court decision in Hidalgo case, *supra*, will lead us to conclude, as we hereby rule, that the taxpayer herein is subject to the rate of 5% imposed under Section 259 of the Tax Code, as amended by Rep. Act No. 39, following the recent decision of the Supreme Court in the Hoa Hin cases and the decision of the Court of Tax Appeals in Lealda Electric case, as cited above.'"[39]

Supposing, however, the legislative franchise granted to a person or firm provides for the following terms and conditions—

"Section 1. *Subject* to the provision of the Constitution and *to the terms and conditions established in Act Numbered Thirty-six hundred and thirty-six, as amended by Commonwealth Act Numbered One hundred and thirty-two*, there is granted to "X" Electric Service, for a period of fifty years from the approval of this Act, the right, privileges and authority to construct, maintain and operate an electric light, heat and power for sale within the city of Bacolod and its suburbs." (Emphasis supplied).

x x x x x

"Sec. 3. In consideration of the franchise and rights hereby granted, the grantee shall pay into the treasury of the Philippines a *franchise tax equal to two per centum* of the gross earnings for electric current sold under this franchise." (Emphasis supplied).

The Supreme Court, in various cases, has ruled on the relation between a franchise tax stipulated in a legislative franchise and the corporate franchise tax fixed in Section 259 of the Tax Code, as follows:

a) *When 5% rate is to be imposed*—

(1) Where the legislative franchise *does not provide for a definite rate* of franchise tax to be paid by the grantee, and said franchise is granted *after* the amendments of Section 259 of the Tax Code in 1946 and 1949, the corporate franchise tax of *5%* on the gross earnings as prescribed by Section 259 governs, the reason being that "at the time (petitioner's) franchise was granted, the original 2% tax (provided in Sec. 10 of Act 3636) had already been increased to 5% by Section 259 of the Internal Revenue Code, as amended by Republic Act Nos. 39 and 418."[40]

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[39] BIR Ruling No. 378, dated September 20, 1961.

[40] Carcar Electric and Ice Plant Co., Inc. v. The Collector of Internal Revenue, G.R. No. L-9257, Oct. 17, 1956; Fortugaliza, Jr. v. Court of Tax Appeals, G.R. No. L-8829, Oct. 30, 1957; Visayan Electric Co. v. Collector of Internal Revenue, G.R. Nos. L-10099 & 10100, Aug. 30, 1959; Visayan Electric Co. v. Collector of Internal Revenue, G.R. No. L-9685, Oct. 30, 1957.

(2) Where the franchise was granted *before* the amendments of Section 259 of the Tax Code, and said franchise prescribes a rate *lower* than 5%, but without any provisions that "such annual payments when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature x x x," then the 5% rate imposed by Section 259 of the Tax Code, as amended, *being higher* than that imposed in the grantee's charter, the grantee has to pay the 5% rate imposed by Section 259 of the Tax Code, as amended.[41]

b) *When rate other than 5% is to be imposed—*

Where the franchise itself fixes a specific rate of franchise tax,[42] and said franchise by its own provision *precludes* the imposition of a higher tax, as when it expressly provides that the rate of franchise tax fixed therein when promptly and fully made by the grantee, shall be in lieu of all taxes of every kind, then the rate therein fixed, and not the 5% rate imposed by Section 259 of the Tax Code, shall govern.[43]

c) *What "terms and conditions" of Act No. 3636 deemed incorporated in franchise—*

Where the legislative franchise expressly provides that it is subject to the terms and conditions of Act No. 3636 (the Model Franchise Act)—

(a) The reference to the terms and conditions found in Act No. 3636 (as provided in grantee's franchise) did not incorporate Section 10 of said Act 3636,[44] as at the time the franchise was

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[41] Hoa Hin Co., Inc. v. David and Hoa Hin Co., Inc. v. Blaquera, G.R. Nos. L-9616 & L-11783, May 25, 1959.

[42] Philippine Railway Company v. Collector of Internal Revenue, G.R. No. L-3859, March 25, 1952; Panay Electric Co. v. Collector of Internal Revenue and Court of Tax Appeals, G.R. No. L-10574, May 28, 1958.

[43] *Supra* note 41.

[44] Sec. 10 Act No. 3636 provides: "The grantee shall pay the same taxes as are now or may hereafter be required by law from other individuals, copartnerships, private, public, or quasi-public associations, corporations, or joint-stock companies, on his (its) real estate, buildings, plants, machinery, and other personal property, except property declared exempt in this section. In consideration of the franchise and rights hereby granted, the grantee shall pay into the municipal treasury of the (of each) municipality in which it is supplying electric current to the public under this franchise, a tax equal to two per centum of the *gross earnings* from electric current sold or supplied under this franchise in said (each said) municipality. Said tax shall be due and payable quarterly and shall be in lieu of any and all taxes of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal, provincial, or insular, now or in the future, on its poles, wires insulators, switches, transformers and structures, installations, conductors, and accessories, placed in and over and under all public property, including public streets and highways, provincial roads, bridges and public squares, and on its franchise, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted.

granted, the original 2% fixed in Act No. 3636 had already been increased to 5% by Section 259 of the Tax Code, as amended.[45]

(b) The portion of Section 10 of said Act deemed incorporated into and became part of the franchise by reference is that which provides that the franchise tax payable "shall be in lieu of any and all taxes of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal, provincial or insular, now or in the future, on its poles, wires insulators, switches, transformers, and structures, installations, conductors, and accessories, placed in over or under public property, including public streets and highways, provincial roads, bridges and public squares, and on its franchise, rights, privileges, receipts, revenues, and profits, from which taxes the grantee is hereby expressly exempted." [46]

In a series of cases, it was held that by virtue of the forequoted exemption clause, the grantee becomes exempt from the payment of *income tax* on its net earnings.[47]

In a more recent case, however, it was ruled that such exemption clause, if contained in the legislative franchise, suffices to *preclude* the imposition of a franchise tax rate other than that fixed in the legislative franchise.[48] Significantly, the *Hoa Hin* case cites, in support of this view, the cases of *Carcar Electric & Ice Plant v. Collector* and *Visayan Elec. Co. v. David.*[49] The legislative franchises involved in these two cases did not expressly embody the exemption clause; they merely were made subject to the terms and conditions of Act No. 3636. The implication, therefore, is that mere reference to the terms and conditions of Act No. 3636 adequately expresses the legislative intent to preclude the imposition of a rate other than that fixed in the franchise.

The franchise granted to Taxpayer "X" in the problem presented *fixes* the franchise tax to be paid at *2%* of its gross earnings for electric current sold under the franchise [50] and expressly provides that the franchise is subject to the terms and conditions established in Act No. 3636, as amended by Commonwealth Act No. 132.[51] Applying the decisional rulings discussed in the preceding pages, tax-

[45] Carcar Electric & Ice Plant Co., Inc. v. Collector of Internal Revenue, *supra* note 40; Visayan Electric Co. v. Collector of Internal Revenue, *supra* note 40.

[46] *Ibid.*

[47] *Ibid.*

[48] *Supra*, note 41.

[49] *Supra* note 45.

[50] Sec. 3, Rep. Act No. 1453.

[51] Sec. 1, *Ibid.*

payer "X" would be subject only to 2% as prescribed in Taxpayer's franchise and not to 5% rate as prescribed by Section 259 of the Tax Code, as amended.

However, the Bureau still has to come up with rulings on whether the provision in Taxpayer's franchise subjecting it to the terms and conditions of Act No. 3636 is sufficient to convey the legislative intent that said provision precludes the imposition of a higher tax, *or* merely exempts the grantee from the payment of income tax on its earnings.