TAXATION

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The 1962 decisions of the Supreme Court in the field of taxation law are mostly reiterations of previous rulings or clarifications of its previous decisions.

I. NATURE OF TAX

In the case of *Republic v. Mambulao Lumber Co.*,[1] the defendant was liable for ₱4,802.37 as forest charges. However, it was claiming that since it paid ₱8,260.52 as reforestation charges under Republic Act No. 115, and since the Republic has not made use of those reforestation charges to reforest the denuded areas covered by its license, it should be compensated with what it owed the Republic by way of forest charges. In denying this request, the Court dealt once more on the nature of a tax, saying that the weight of authority is to the effect that internal revenue taxes, such as forest charges, cannot be the subject of setoff or compensation.

> "A claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set off under the statutes of setoff, which are construed uniformly in the light of public policy, to exclude the remedy in an action or any indebtedness of the state or municipality to one who is liable to the state or municipality for taxes. Neither are they proper subjects of recoupment since they do not arise out of the contract or transaction sued on."

The reason is that taxes are not in the nature of contracts between the parties but grow out of duty to and are the positive acts of the government to the making and enforcement of which the personal consent of individual taxpayers is not required. If a taxpayer can properly refuse to pay his tax when called upon to do so on the ground that he has a claim against the government, it is plain that some legitimate and necessary expenditure must be curtailed.[2]

The *Mambulao* case is one instance wherein the Court seems to have clarified, without its saying so, its ruling in a previous

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[1] G.R. No. L-17725, February 28, 1962.
[2] 47 AM. JUR. 766.

case. In the case of *Collector v. Pio Barretto*,[3] the Court said that forest charges are taxes *only* in the sense that they are to be collected by the Collector of Internal Revenue and the regulations for their collection are contained in the National Internal Revenue Code. The Court therein added that forest charges are in a sense contractual in origin. Now comes the *Mambulao* case from which it can be inferred that forest charges are taxes, not only in the sense that they are to be collected by the Collector and that regulations for their collections are contained in the Revenue Code, but also in other cases. What these cases are, the Court has not specified. There is, as yet, no guide as to when forest charges are taxes and when they are not. Some cases hold that they are taxes while others hold that they are not. An illustration of the latter is the case of *Collector v. Lacson*.[4] In that case, Lacson was claiming exemption from the payment of forest charges under Republic Act No. 901, but the Supreme Court held that the exemption under Republic Act No. 901 is limited to taxes, and since forest charges are not taxes, Lacson could not claim exemption therefrom. The cases, therefore, do not provide a basis for any prediction as to how the Court will rule in future litigations. It is hereby urged that the Supreme Court lay down the rule as to when forest charges are taxes and when they are not.

II. INCOME TAX

The Supreme Court, in the case of *Collector v. Alberto Jamir*,[5] sanctioned the adoption of the "expenditures method" in arriving at the net income, saying that this method should be applied by deducting the aggregate *yearly* expenditures from the declared *yearly* income, not the expenditures incurred each month from the declared income for the corresponding month.

III. REAL ESTATE TAX

In the case of *Mindanao Bus Co. v. City Assessor and Treasurer of Board of Tax Appeals*,[6] the issue raised was whether the Mindanao Bus Co. was liable for the payment of realty tax on its maintenance and repair equipments. The petitioner is a public utility engaged solely in transporting passengers and cargoes. It main-

[3] G.R. No. L-11805, August 31, 1960.
[4] G.R. No. L-12945, April 29, 1960.
[5] G.R. No. L-16552, March 30, 1962.
[6] G.R. No. L-17870, September 29, 1962.

tains and operates a garage for its TPU trucks, as well as a repair shop with the repair machineries which are now sought to be taxed as realty. The respondents contend that the repair equipments are immobilized by destination in accordance with paragraph 5 of Article 415 of the Civil Code which provides as follows:

> "Art. 415. The following are immovable property:
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> x x x x x x x x
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> 5. Machinery, receptacle, instruments or implements intended by the owner of the tenement for an industry or works which may be carried out in a building or on a piece of land and which tend directly to meet the needs of the said industry or works."

In ruling against the respondents, the Supreme Court said that movable equipments to be immobilized in contemplation of the law must first be "essential and principal elements" of an industry or works without which such industry or works would be unable to function or carry on the industrial purpose for which it was established. It is further required that the industry or works be carried on in a building or on a piece of land. These two requisites are wanting in the case at bar. The equipments are by their nature not essential elements of the petitioner's business of transportation. They are merely incidentals, acquired as movables and used only for expediency to facilitate the service. In fact, even without such tools, the business may be carried on as the petitioner has previously carried on before the war. Besides, the petitioner's business is not carried on in a building or tenement, hence said equipments may not be considered real estate subject to real estate tax.

IV. BUSINESS TAXES

1. SALES TAX

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

In the case of *Taligaman Lumber Co. v. Collector*,[1] the petitioner was assessed deficiency sales tax in the amount of ₱85,790.91. It was contended that the export sales were consummated abroad and hence not taxable in the Philippines. The Court, however, held that the agreed price which was F.O.B. Agusan indicates, although *prima facie*, that the parties intended title to pass to buyers upon delivery of logs in Agusan on board the vessel which took them to Japan. This *prima facie* proof was bolstered by the following circumstances: (1) the opening of irrevocable letters of credit by the Japanese buyers in favor of the petitioner; and (2) the payment of freight charges by the buyers and the chartering of the vessel by the buyers.

[1] G.R. No. L-15716, March 31, 1962.

Upon the foregoing facts and on the authority of *Bislig Lumber Co. v. Collector*[8] and *Misamis Lumber Co. v. Collector*,[9] it is clear that said export sales were consummated in the Philippines and consequently, they are subject to sales tax therein.

(b) *Who may be liable for sales tax*

Ordinarily, a sales tax is imposed on the seller. However, a buyer may also be made to pay the same if he is an importer within the meaning of Section 183(b) of the Revenue Code. Thus in the case of *Tan Tiong Bio v. Commissioner*,[10] one Dee Hong Lue purchased surplus goods from the Foreign Liquidation Commission as trustee for Central Syndicate which was then in the process of organization. From this transaction the corporation realized a gross profit of 18.8%. It was assessed ₱33,798.88 as deficiency sales tax the liability for which was denied by the corporation on the ground that it is not an importer within the meaning of the law. The Supreme Court held that even granting that Dee Hong Lue is the purchaser of the surplus goods in his own right, nevertheless the corporation may still be regarded as importer of the same goods because the former transferred all his rights in the contract with the Foreign Liquidation Commission and it was said corporation which took delivery of the goods from the United States Military Base. It is now well-settled that a person who buys surplus goods from the Foreign Liquidation Commission and who removes the same from the United States Military Base in the Philippines is considered an importer of such goods and is subject to sales tax or compensating tax as the case may be.[11] This ruling was also applied in the subsequent case of *Co Po v. Collector*.[12] The Court reasoned out that to hold otherwise would be to bring about the very situation which the law intends to avoid, that is, the influx of articles, free of tax, into military bases and the subsequent indiscriminate distribution and sale thereof to the public, also free of tax. It is in this spirit that the decisions herein cited were conceived and formulated.

2. PERCENTAGE TAX

(a) *On Tailor Shops*

Section 191 of the Revenue Code, which imposes a percentage tax on contracts for a piece of work, found its application in the

[8] G.R. No. L-13186, January 28, 1961.
[9] G.R. No. L-10131, September 30, 1957.
[10] G.R. No. L-15718, April 23, 1962.
[11] Saura Import & Export Co. v. Meer, G.R. No. L-2927, February 25, 1951; PMP Navigation Co. v. Meer, G.R. No. L-4627, March 24, 1953; Soriano y Cia. v. Collector, 51 O.G. 4548.
[12] G.R. No. L-17303, August 31, 1962.

case of *Union Garment Co. v. Court of Tax Appeals.*[13] The petitioner herein was engaged in the tailoring business. In 1953 it entered into a contract with the AFP under which it was granted the exclusive right to sew or tailor pants and similar apparel. The AFP furnished the materials while petitioner furnished the labor and service needed. The Collector sought to collect percentage tax under Section 191 which was contested by the petitioner. The Court upheld the validity of the assessment because in the present case, the petitioner merely sold his services and hence his case falls under the provision imposing a tax on amounts received for the lease of services in accordance with Section 191 of the Revenue Code.

(b) *On Common Carriers*

In the case of *Commissioner v. United States Lines Co.*,[14] the petitioner is the operator of ocean-going vessels transporting passengers and freight to and from the Philippines. In addition, it is the sole agent and representative of the Pacific Far East Lines. It also acted in behalf of the West Coast Trans-Oceanic Steamship Lines Co., a non-resident foreign corporation. The Commissioner of Internal Revenue assessed and demanded from the corporation as deficiency tax: ((1) the sum of ₱6,691 for its business; (2) ₱5,429 as agent of Pacific Far East Lines; and (3) ₱13,649.05 on the freight revenue of the West Coast Trans-Oceanic Steamship Lines Co. The petitioner filed a petition with the Court of Tax Appeals contesting the imposition of the carrier's percentage tax on the gross receipts of the West Coast Co. The Court of Tax Appeals ruled for the Commissioner. Hence this appeal. The Supreme Court upheld the decision, saying that what the legal provision purports to tax is the business of transportation. The person liable is of course the owner or operator but this does not mean that he and he alone can be made actually to pay the tax. In other words, whoever acts in his behalf may be held liable to pay for and in behalf of the carrier or operator such percentage tax on the business. This is however without prejudice to its right to recover from the principal.

3. SPECIFIC TAX

In the case of *La Tondeña Inc. v. Collector*,[15] the petitioner has for its principal business the manufacture of wines and liquors. As such manufacturer, La Tondeña buys its alcohol from different sugar centrals which it subjects to further rectification or distilla-

[13] G.R. No. L-16809, January 31, 1962.
[14] G.R. No. L-16850, May 30, 1962.
[15] G.R. No. L-14375, September 29, 1962.

tion. In the May 21, 1951 to February 26, 1954 purchases of the petitioner, differences in the number of liters originally shipped to the petitioner's distillery were found by the Collector and for such shortages, the petitioner was assessed the amount of ₱6,019.30 representing specific tax on the alcohol admittedly lost. The Supreme Court however ruled for the petitioner. As the law then stood the tax on alcohol did not attach as soon as it was in existence but on the finished product, and so the Court held that the petitioner was not liable for the payment of specific tax on the alcohol lost in the handling and redistillation of the same.

Under the present law, however, the tax attaches as soon as the alcohol is in existence. Republic Act No. 1608 was passed in 1956, Section 5 of which added the following proviso to Section 191, to wit:

> ". . . And *Provided further,* That in cases where alcohol has already been rectified either by original and continuous distillation or by redistillation is further re-rectified, no loss for rectification and handling shall be allowed and the rectifier thereof shall pay the specific tax due on such losses."

It is hereby submitted that the law as it then stood before the enactment of Republic Act No. 1608 and as applied by the Court in the *La Tondeña* case, is the better law. For it would be unjust to require a duly licensed rectifier to pay specific tax on alcohol lost in its handling or redistillation.

4. SPECIAL EXCISE TAX

Under Republic Act No. 601

The Supreme Court had occasion to clarify its stand in prior cases involving a similar issue in the case of *Floro v. Philippine National Bank and Central Bank of the Philippines.*[16] This case involves a claim for refund of ₱25,010.49 levied as 17% special excise tax on dollar remittances by the plaintiff in connection with certain importations from the United States. The levies were made by virtue of Republic Act No. 601 approved on March 28, 1951. It appears that on various dates between July 15, 1949 and December 11, 1950, the petitioner applied for and was granted letters of credit by the Philippine National Bank in favor of business firms in the United States. These firms drew the corresponding dollar drafts against the letters of credit and the same were paid by the New York agency of the bank between August 18, 1949 and March 14, 1951, all before the effectivity of Republic Act No. 601. Upon ar-

[16] G.R. No. L-15206, August 30, 1962.

rival of the shipments in Manila, the petitioner paid, under protest, the special excise tax of 17%, the refund of which is the subject of the present petition. The Supreme Court, clarifying its decisions in the test cases of *Philippine National Bank v. Zulueta*,[17] *Philippine National Bank and Central Bank v. Union Books Inc.*,[18] and *Philippine National Bank v. Arrozal & Co.*,[19] said that it is the payment of the amount in foreign currency to the creditor by the bank or its agent which is necessary to consummate the contract, hence it is the date of such payment which determines whether such amount of foreign currency is subject to the tax imposed by the government of the country where the letter of credit was granted. In the present case, all the payments sought to be taxed were made prior to the effectivity of Republic Act No. 601, hence not subject to the special excise tax imposed therein.

V. COURT OF TAX APPEALS

Under Republic Act No. 1125, the Court of Tax Appeals has exclusive appellate jurisdiction to review by appeal decisions of the Collector of Internal Revenue, Commissioner of Customs, Provincial and City Boards of Assessment Appeals in all cases involving disputed assessments, among others, of internal revenue taxes, customs duties, and real property taxes. Section 22 thereof provides that cases involving disputed assessments then pending determination in Courts of First Instance shall be remanded to the Court of Tax Appeals. This section is mandatory and if the Court of First Instance fails to comply with it, any decision it might have rendered thereunder is null and void.[20]

VI. ASSESSMENT AND COLLECTION

1. WHAT CONSTITUTES DISTRAINT UNDER THE CODE

Under Section 332(c) of the Revenue Code, where the assessment of any internal revenue tax has been made within the period of limitation prescribed by the Code, such tax may be collected by distraint or levy or by a proceeding in court but only if begun within five years after assessment. As to what constitutes distraint or levy was succinctly interpreted by the Supreme Court in the case of *Palanca v. Commissioner*.[21] The estate of the deceased Gliceria Di-

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[17] G.R. No. L-7271, August 30, 1957.
[18] G.R. No. L-8490, August 30, 1957.
[19] G.R. No. L-8831, March 28, 1958.
[20] Provincial Treasurer and Provincial Assessor of Negros Occidental v. Jose Azcona, G.R. No. L-13654, July 30. 1962.
[21] G.R. No. L-16661, January 31, 1962.

luangco who died in 1947 was assessed estate and inheritance taxes in the total amount of ₱9,705.61 on March 27, 1951. This amount was later increased to ₱22,533.46. On March 5, 1952, the Commissioner issued a warrant of distraint and levy but the same was not executed because the taxpayers made several requests for reinvestigation. Another warrant was issued on June 23, 1955 but again, it was not executed due to a series of requests for reinvestigation and revaluation. Before their request for revaluation could be acted upon, the heirs made a turn-about by raising the defense of prescription. The Court held that the right of the government to collect the taxes herein involved has not prescribed. *The issuance of the warrant begins the summary remedy of distraint and levy and execution is not necessary to make it effective.* In this case, the warrant was issued within the five-year period prescribed by law. From then on, therefore, the period of limitation was suspended. It should also be noted that the warrant was not executed because of the appellants' requests for reinvestigation and revaluation and not through the fault of the Commissioner. The Court added that for the warrant to be effective it is not necessary that it should describe the property sought to be levied. This is so because a description of the property is required to be made only in the certificate issued by the Internal Revenue agent after he has seized the property as provided by Section 324 of the Revenue Code.

2. Prescription of the Right to Assess and Collect

The government can only collect taxes within the period allowed by law. In the case of *Republic v. Damian Ret*,[22] it was held that the five-year period of limitation fixed by Section 332(c) does not apply to income taxes if the collection of the same is to be made by summary procedure because this is expressly provided for by Section 51(d), but if the collection is to be effected by court action, then Section 332(c) will be controlling. Title II of the Code is a specific provision which governs exclusively all matters pertaining to income taxes whereas Title IX is a general provision which cannot apply insofar as it may conflict with Title II. However, in the absence of a provision in Title II relating to the period and method of collection, Title IX may be deemed to have suppletory effect.

As the law now stands, however, the above ruling no longer holds true. Section 51(d) has been repealed by Republic Act No. 2343 to the effect that the period of limitation for the collection of income taxes is now found in the general provisions of Sections 331 and 332.

[22] G.R. No. L-13754, March 31, 1962.

In some instances, the prescriptive periods provided for by the Revenue Code are not applicable, and resort is made to the Civil Code. These are actions for forfeiture of the bond put up by the taxpayer and not for collection of taxes. This should be so because as soon as the bond is executed, the taxpayer assumes a second and entirely distinct obligation and he becomes subject to a new and entirely different kind of liability which was voluntary and contractual.[23]

In the *Damian Ret* case, the Court reiterated its ruling in a previous case[24] that the written extrajudicial demand by the Collector could not suspend the running of the prescriptive period. The only agreement that could suspend the period is a written agreement between the taxpayer and the Collector, entered into before the expiration of the five-year period, extending the period of limitation prescribed by law. In fact, the Court said that not even a criminal action brought against the taxpayer for violation of the Code will suspend the running of the prescriptive period. However, as was held in the case of *Republic v. Limcaco,* if the action is for the forfeiture of the bond executed by the taxpayer, then demand letters of the Collector would interrupt the running of the period, pursuant to Article 1155 of the Civil Code.

3. BURDEN OF PROOF

Inasmuch as prescription is an affirmative defense on the part of the taxpayer, it is therefore, incumbent upon him if he wants to avail himself of the effects of Section 331 which allows a shorter period of five years, to prove that he submitted the corresponding returns and that therefore the said section is applicable. Upon his failure to prove the same, then the government will have ten years within which to assess or collect as provided by Section 332(a).[25]

4. "IN SATISFACTION OF THE CLAIM" UNDER SECTION 328 CONSTRUED

In the case of *Maria B. Castro v. Collector,*[26] the Court had occasion to construe Section 328 of the Revenue Code. The first paragraph of said section reads, as follows:

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[23] Republic v. Xavier Gun Trading Co., G.R. No. L-17325, April 26, 1962; Republic v. Limaco and de Guzman Commercial Co., G.R. No. L-13081, August 31, 1962; Republic v. Mambulao Lumber Co., G.R. No. L-18942, November 30, 1962.

[24] Collector v. Manuel Pineda, G.R. No. L-14522, May 31, 1961.

[25] Taligaman Lumber Co. v. Collector, *supra* note 7; Querol v. Collector, G.R. No. L-16705, October 30, 1962.

[26] G.R. No. L-12174, April 26, 1962.

> "In case there is no bidder for real property exposed for sale as herein above provided or if the highest bid is for an amount insufficient to pay the taxes, penalties, and costs, the provincial or city treasurer shall declare the property forfeited to the Government in satisfaction of the claim in question and within two days thereafter shall make a return of his proceedings and the forfeiture, which shall be spread upon the records of his office."

In this case, the taxpayer claims that the forfeiture and sale of certain properties belonging to her constitutes a full discharge of her tax liability. She maintains that the term "satisfaction" signifies nothing but full discharge. The Supreme Court refused to accept such an interpretation, holding that such a theory would permit a clever taxpayer to conceal his valuable properties and leave his insignificant ones to be seized in full satisfaction of his tax liability. Furthermore, the Court said, Section 330 of the Code provides that "remedy by distraint of personal property and levy on realty may be repeated if necessary until the full amount due, including all expenses, is collected."

5. Power of the Collector to Compromise

The power of the Collector to compromise any action or claim arising under the Revenue Code and to credit taxes erroneously or illegally received is subject to the provision of Section 306 to the effect that before a proceeding can be maintained for the recovery of an internal revenue tax erroneously or illegally assessed or collected, a claim for refund or credit must be filed with the Collector *within two years* from the date of the payment of the tax or penalty.[27]

6. Tax Sale

If a delinquent taxpayer does not repurchase the property sold within one year from the date of the sale, it becomes a mandatory duty of the provincial treasurer to issue a final deed of sale in favor of the purchaser.[28]

VII. REMEDIES OF THE TAXPAYER

1. Appeal to the Court of Tax Appeals

The right to appeal a decision of the Collector to the Court of Tax Appeals is merely a statutory remedy. Nevertheless, the requirement that it must be brought within thirty days after receipt of the decision or ruling is jurisdictional and the Tax Court can raise the issue of jurisdiction *moto proprio* because being a court

[27] Republic v. Vda. de Lao, G.R. No. L-16513, January 31, 1962.
[28] Velasquez v. Hon. Pedro Coronel, G.R. No. L-18745, August 30, 1962.

of special jurisdiction and as such, can only take cognizance of matters clearly within its jurisdiction, it may in its own initiative raise the question of jurisdiction to obviate the possibility that its decision may be rendered void although its jurisdiction had not been questioned by the parties. This was the Supreme Court's ruling in the case of *Ker and Co. v. Court of Tax Appeals*.[29] Here, the Collector assessed against the petitioner the sums of ₱42,342.30, ₱18,651.87, ₱139.67, and ₱12,813.00 as income taxes for the years 1947, 1948, 1949, and 1950, respectively. Upon failure of the petitioner to pay the said amounts, the Collector sent a demand letter on February 16, 1953. Counsel for the petitioner sought a reconsideration and the assessments were reduced in the Collector's second demand letter on January 5, 1954. When the Collector sought to enforce the collection of the taxes in 1956 by issuing a warrant of distraint and levy, the petitioner filed a petition for review with the Court of Tax Appeals but the latter dismissed the petition for lack of jurisdiction, it having been filed beyond the thirty-day period required by law. The Supreme Court upheld the dismissal saying that since the second letter of demand contains a final determination of the petitioner's tax liability, such letter must be considered as the decision appealable to the Court of Tax Appeals, and since the appeal was made far beyond the thirty-day period, the Tax Court rightly dismissed the same. This principle was also applied in the similar cases of *Roman Catholic Archbishop of Cebu v. Collector*,[30] *Commissioner v. Joseph, et al.*,[31] *Jose Ma. del Rosario v. Court of Tax Appeals*.[32]

Failure to appeal the Collector's decision within the thirty-day period makes the assessment final, executory, and demandable.[33] To assail the finality of such assessment, the taxpayer must prove that it did not become final because he had not received any notice of the decision or that there was no evidence to prove the exact date on which such notice, if any, was received by him. These questions cannot be raised for the first time on appeal.[34]

2. REFUND

(a) *Claim for refund as condition precedent*

Pursuant to the provision of Section 306 of the Code, a taxpayer must file, within two years from the date of payment of the tax, a

[29] G.R. No. L-12396, January 31, 1962.
[30] G.R. No. L-16603, January 31, 1962.
[31] G.R. No. L-14034, August 30, 1962.
[32] G.R. No. L-17991, October 31, 1962.
[33] Republic v. Antonio Albert, G.R. No. L-12996, December 28, 1961.
[34] Republic v. Antonio Albert, G.R. No. L-12995, January 31, 1962.

claim for refund with the Collector before bringing an action for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected. This provision is mandatory and a condition precedent to the prosecution of any action for the recovery of taxes paid, the noncompliance of which bars the action, nay, it subjects the claim to dismissal for lack of cause of action.[35]

However, the Court made exception to this rule in the cases of *Roman Catholic Archbishop of Cebu v. Collector*,[36] and *East Asiatic Co. v. City of Davao*.[37] In the first case, the Court distinguished disputed assessments from internal revenue taxes, saying that in cases where the taxpayer, from the beginning, protested and refused to pay and finally paid under protest, a claim for refund is not required of him for the successful prosecution of his appeal. In the instant case, the petitioner, upon receiving the assessment notice from the Collector, protested and refused to pay. He finally paid under protest and later appealed to the Court of Tax Appeals. The Tax Court dismissed the appeal on the ground that a claim for refund was not filed with the Collector. The Supreme Court upheld the dismissal but on a different ground—the appeal was made beyond the thirty-day period fixed by law. The Court said that this being a case involving a disputed assessment as distinguished from a refund, a claim for refund need not be filed, for it would in effect require of the petitioner to go through a useless and needless ceremony that would only delay the disposition of the case.

It is to be noted that in the above case, the Supreme Court nevertheless affirmed the dismissal of the action on the ground that the appeal was made beyond the thirty-day period required by law. The distinction made by the Court was, therefore, not necessary for the proper disposal of the action, and it is submitted that, to avoid confusion, the same should not have been made at all. Not a few will hold the view that the case was one for refund. In several cases for refund, the taxpayer disputes the assessment from the time he receives notice thereof, refuses to pay, and when he finally pays, he does so under protest. Is this not the situation in the instant case? Where lies the difference? If the rule laid down by the Court in this case is to be strictly followed, then the only cases for refund would be those in which the taxpayer at first willingly pays the tax, and then, as an afterthought, files a claim for refund claiming that he was not liable for the tax or that he paid too much. It

[35] Republic v. Vda. de Lao, *supra* note 27; Republic v. Limaco, *supra* note 28.
[36] *Supra* note 30.
[37] G.R. No. L-16253, August 21, 1962.

would then not apply to a case where the taxpayer questions the assessment from the beginning, in which case, he need not file a claim for refund since it is not a case for refund but one involving disputed assessments. Is this the intention of the Court in making the distinction? Does this case, therefore, revoke the ruling in the case of *Johnston Lumber Co. v. Court of Tax Appeals* [38] wherein it was held that the filing of a claim for refund is *mandatory?* If so, an express pronouncement to that effect is in order.

In the *East Asiatic Co.* case, the Court held that, being unauthorized, the tax in question is not a tax under the Charter of the appellant City of Davao and for that reason, no protest is necessary for its recovery. Once the court has determined that the tax is *ultra vires* and unlawful, it can, in the same decision, order its refund to the taxpayer, notwithstanding the fact that no protest or claim for refund had been made.

(b) *Liability of the Government for interest*

In the case of *Gibbs v. Collector,*[39] the Supreme Court reiterated its rulings in previous cases [40] that the matter of payment of interest on sums collected by way of taxes which the Government is subsequently sentenced to refund to the taxpayer, depends on whether or not the collection of said sums is manifestly unwarranted. In the present case, it is clearly not so in the light of the attending circumstances. Hence, the amount refundable by the Government should draw no interest.

VII. EXEMPTIONS

It is well-settled that legal provisions granting tax exemptions are to be construed strictly against the grantee and liberally in favor of the taxing power. This principle was again applied in the cases of *Union Garment Co. v. Court of Tax Appeals,*[41] and the *Philippine International Fair v. Collector.*[42] In the first case, Union Garment Co. was claiming exemption from percentage taxes by virtue of Republic Act No. 816 which exempts all purchases made by the AFP. The Court ruled that tax statutes must be strictly construed against the one claiming it. All that the petitioner invested was the service rendered in sewing the materials, which were furnished

[38] 53 O.G. No. 16, 5226.
[39] G.R. No. L-14166, April 28, 1962.
[40] Collector v. Convention of the Philippine Baptist Churches, G.R. No. L-11807, May 19, 1961; Collector v. Sweeney, G.R. No. L-12178, August 21, 1959; Collector v. St. Paul's Hospital, G.R. No. L-12127, May 21, 1959.
[41] *Supra* note 13.
[42] G.R. No. L-12928, March 31, 1962.

by the AFP, into garments. It is therefore liable for payment of the percentage tax imposed by Section 191 of the Code.

In the second case, the petitioner held a National Fair with sideshows, balls, dances, and other attractions. The Collector demanded payment of ₱132,000 as amusement tax. The petitioner contends that it is not subject to amusement tax, invoking the spirit of Republic Act No. 722 which exempts operas, concerts, recitals, dramas, painting and art exhibitions, flower shows, and literary, oratorical, or musical programs except film exhibitions and radio or phonographic records thereof from the payment of any national or municipal amusement tax on the receipts therefrom. The Court, in ruling against the exemption, said that the petitioner cannot invoke the spirit of Republic Act No. 722 inasmuch as there is no legal provision which expressly exempts the Philippine International Fair from paying the amusement tax under Section 260 of the Revenue Code.

In the case of *Collector v. Club Filipino de Cebu,*[42] the Club was organized to develop and cultivate sports of all class for the healthful recreation and entertainment of its stockholders and members. Nowhere in its constitution or by-laws can be found an authority to distribute dividends. It was operated mainly with funds from membership fees. The proceeds of its bar and restaurant was used to defray its overall overhead expenses and to improve its golf course. The Supreme Court, in exempting the club from fixed and percentage taxes, said that the fixed and percentage taxes under the Code are taxes on business. The club was deemed to be not engaged in business and therefore not liable for the said taxes. The plain and ordinary meaning of "business" is restricted to activities or affairs where profit is the purpose or livelihood is the motive. Although some profits are derived in this case, such is only incidental to its primary object.

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[43] G.R. No. L-12719, May 31, 1962.