THE LAW ON TAXATION

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THE POWER TO TAX AND MUNICIPAL CORPORATIONS

Taxation [1] is an attribute of sovereignty.[2] It has been defined as "the power inherent in the sovereign state to recover a contribution of money or other property, in accordance with some reasonable rule or apportionment, from the property or occupation within its jurisdiction for the purpose of defraying the public expenses." [3] But it is not possessed by municipalities or municipal divisions unless delegated to them.[4]

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* Notes & Comments Editor, *Philippine Law Journal*, 1963-64.

[1] The importance of taxation has been stated thus: "Lawyers become educated to the ramifications of tax law, going as it does down all the highways and byways of the common law and legal practice—wills and probate, corporations and their reorganization, contracts and the commercial law of the business community, real estate and security transactions, and even criminal law, domestic relations, and such rarefied regions as conflicts and international law. The bar is gradually becoming educated to the fact that in terms of daily relations of human beings with each other and with their government, probably no area of law has greater impact or plays a more important part."—Influence of Courts on Tax Policy and Current Trends, by Joel Barlow, *The History & Philosophy of Taxation*, Conference Papers, John Marshall Bicentennial Program, College of William & Mary, W. Virginia, 1955.

The confusing though comic nature of the subject is best illustrated in a cartoon that appeared recently, *Mutt & Jeff*, by Al Smith. The strip contained this dialogue: "Mutt, what do they mean they are gonna cut taxes," "Just what it says! Next year you will pay less taxes." "But if taxes are cut the government will get less money!" "That's right! If taxes are cut then you will have more money to spend. And if you spend more money that will increase business. And if business increases then the government will collect more taxes!" Jeff: "?"

[2] "Sovereignty and the Power to Tax" is discussed amply by U.S. Supreme Court Justice Owen J. Roberts in his book, The Court & the Constitution.

The dissenting opinion of Justice Holmes in Panhandle Oil Co. v. Knox, 277 U.S. 218 (1928), boldly proclaimed: "But this Court which so often has defeated the attempt to tax in certain ways can defeat an attempt to discriminate or otherwise go too far without wholly abolishing the power to tax. The power to tax is not the power to destroy while this Court sits." But Roberts does not wholly agree, and he quotes favorably Justice Marshall's classic dictum in *McCulloch v. Maryland*, 4 Wheaton 316: "That the power to tax involved the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance, in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied. But all inconsistencies are to be reconciled by the magic word *confidence*. Taxation, it is said, does not necessarily and unavoidably destroy. To carry it to the excess of destruction would be an abuse, to presume which would banish the confidence which is essential to all government."

[3] ALEJANDRO, TAXATION 694 (2nd ed), citing 1 COOLEY, TAXATION 149-151 (4th ed).

[4] Saldaña v. Iloilo, G.R. No. L-14070, June 26, 1956; ALEJANDRO, *op. cit.*, p. 760.

Ordinance imposing wharfage fees declared ultra vires, hence void

In *Tan v. Municipality of Pagbilao*,[5] the Supreme Court restated the foregoing theory underlying the power of taxation. It further held that the defendant municipaliy could not validly enact an ordinance imposing charges or fees[6] on articles landed or loaded from its wharf.

Declaring the ordinance *ultra vires* and therefore null and void, the Court held that being a specific tax, the municipality had no right to impose it. Aside from being a specific tax, the measure was also a wharfage fee; its designation as "rental of municipal property" did not change its basic character. As such it was also beyond the power of the municipal council to impose because a municipal tax in whatever form upon goods and merchandise carried into the municipality or out of the same, and any attempt to impose such tax in the guise of wharfage fee or charge is void.[7]

It followed that plaintiff, fishermen and merchants, were entitled to refund of fees they paid because the payment were made not only under protest but the collection was pursuant to an invalid ordinance. As held by the Court in a previous case, moneys collected under invalid acts or tax laws are refundable, even if the payments were voluntary.

Municipal council has no power to impose fees not expressly granted

Three ordinances providing for internal organ, meat inspection and corral fees—aside from the slaughterhouse fee—were enacted by the municipal council of Caloocan, Rizal (now Caloocan City). Despite revocation of these ordinances by the Provincial Board of Rizal, the municipality refused to discontinue the enforcement of said ordinances and resisted claims for refund of fees collected thereunder.

Declaring the ordinances *ultra vires*, such that refund was in order, the Court ruled in *Santos v. Municipal Government of Caloocan*[9] that the council had assumed upon itself a power to ordain a revenue measure invalidly. The rule is that the power of the municipality to exact such fees must be expressly granted by charter

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[5] G.R. L-14264, April 30, 1963.

[6] Strictly speaking, there is a difference between fees and taxes. License fees imposed for the regulations of useful and non-useful occupations are not taxes; only those imposed for revenue purposes are properly taxes.

[7] Sec. 2287, REV. ADMINISTRATIVE CODE.

[8] East Asiatic Co. Ltd. v. City of Davao, G.R. No. L-16253, August 21, 1962.

[9] G.R. No. L-15807, April 22, 1963.

or statute and is not to be implied from the inferred power to license and regulate merely.[10]

Under Sec. 1 of Commonwealth Act No. 655, continued the Court, the municipality is empowered to establish a slaughterhouse, provide for the veterinary and sanitary inspection, to inspect and regulate the use of the same, and to charge reasonable slaughterhouse fees. When the municipal council ordained payment of three other fees, it overstepped the limits of its statutory grant.

Under Rep. Act No. 2264, city can impose specific tax on bottled Coca-cola

The issue in *City of Bacolod v. Gruet* [11] was whether the city could impose a 3-centavo tax on every case of bottled Coca-cola under one ordinance, when its manufacturer was already paying to it ₱100 yearly as "manufacturer of aerated water" required by another ordinance.

Under the Local Autonomy Act, the Court explained, cities. municipalities and municipal districts generally are empowered to impose not only license fees upon persons engaged in any business but also to levy just and uniform taxes. The exception is that, as expressly provided, municipalities and municipal districts shall, in no case, impose any percentage tax on sales or other taxes in any form based thereon nor impose taxes on articles subject to specific tax, except gasoline, under the provisions of the Tax Code. But this exception, the Court went on, applied only to municipalities and municipal districts. Being a city, Bacolod was not comprehended by the proviso. The ₱0.03 tax on every case of Coca-cola was held within its express power.

Note that this ruling overturns previous ones [12] where the Court held that the authority of a city council or municipal board to tax an occupation or business does not include the power to impose a tax on specific articles. The explanation for this variation in ruling is that the previous cases were decided prior to the enactment of Republic Act No. 2264, and under the law then in force (Com. Act No. 472), there was authority to levy for public purposes, just and uni-

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[10] Co Unjieng v. Patstone, 42 Phil. 818. But under Rep. Act No. 2264, the Local Autonomy Act, the rue of construction expressly provided therein is that any doubt as whether a power has been granted, or whether an act is within its powers, shall be resolved liberally in favor of the local governments.

[11] G.R. L-18290, January 31, 1963.

[12] Medina v. City of Baguio, G.R. No. L-4080, Aug. 29, 1952; Stanvac v. Antigua, G.R. No. L-6931, April 30, 1955; and Wa Yu v. City of Lipa, G.R. L-9167, Sept. 27, 1956.

form taxes, but this was qualified by the limitation "other than percentage taxes and taxes on specified articles."

Ordinance regarding motor vehicles held valid as percentage sales tax, with enforcement clause

Petitioner in *Hodges v. City of Iloilo* [13] contested the city's ordinance requiring payment of sales tax of ½ of 1% of selling price of any motor vehicle unless the tax has been paid. The lower court held that the part of the ordinance requiring owner of second-hand motor vehicle to pay sales tax is valid, but that part which require payment of the tax as a condition precedent to registration is invalid.

Upholding the ordinance as a whole, the Supreme Court declared that the ordinance was within the authority and power of the municipal board of Iloilo. The sales tax of ½ of 1% comes within the category of just and uniform tax under the provisions of Sec. 2 of Republic Act No. 2264. There is a prohibition in said section on imposing a percentage tax, true; but the prohibition refers only to municipalities and municipal districts, and does not comprehend chartered cities like Iloilo.

As to the additional requirement of payment of the tax before registration of the sale, the Court held this proviso was not a tax; it was merely a coercive measure to make the enforcement of said percentage tax effective. For the power to impose a tax must be clothed with the implied authority to devise ways to accomplish collection in the most effective manner.

PERSONALITY OF THE TAXPAYER

Being a taxpayer is not always sufficient to clothe a person with personal and substantial interest so as to be able to sue.[14] Aside from being a mere taxpayer, the interested person must show that he will sustain, or has sustained, direct injury; not merely that he suffers in some indefinite way in common with the people generally.[15]

But, very lately, Court rulings as to the personality of the taxpayer have tended to liberalize the rule. One authority contends that perhaps it may now be regarded as settled in this jurisdiction in line with the preponderant opinion of the state supreme courts in

[13] G.R. No. L-18129, January 31, 1963.

[14] Custodio v. Senate President, 42 O.G. 1243, where suit to invalidate the law granting backpay to members of Congress was dismissed on the ground that the only interest shown by the petitioner was that of a citizen and taxpayer of the Philippines, and that of a government employee alleging equal rights to backpay.

[15] People v. Vera, 65 Phil. 56; Bautista v. Municipal Council, G.R. L-7200, Feb. 11, 1956, cited in 1 TAÑADA & CARREON, POLITICAL LAW 408 (1st ed).

the United States, that a taxpayer has sufficient interest to impugn the validity of appropriation measures.[16]

Rice producer, necessarily a taxpayer, has personality to contest rice importation

In *Gonzales v. Hechanova*,[17] the Court held that a rice producer and landowner, who was necessarily a taxpayer too, had sufficient personality and interest to contest the legality of the importation of rice and corn by a government agency.

The Court reasoned out as follows: Under Sec. 1 of Republic Act No. 3452, it is "the policy of the government to engage in the purchase of these basic foods (rice and corn) directly from those growers, producers and landowners who wish to dispose of their products at a price that will afford them a fair and just return for their labor and capital investment." Petitioner, as a planter with a substantial area of riceland, was entitled to a chance to sell to the government the rice it sought to buy abroad. Further the purchase will be effected with public funds raised by taxation, and petitioner is necessarily a taxpayer with interest on how tax money was being spent. Petitioner was adjudged with sufficient personality to sue the respondent, who as Executive Secretary and *alter ego* of the President authorized the importation.

Worthy of note, this ruling buttresses a previous holding of the Court, in Pascual v. Secretary,[18] where a taxpayer who was also a provincial elective official was allowed to question the legality of an appropriation measure. In this leading case, the Court stated that not only persons individually affected but also taxpayers have sufficient interest in preventing the illegal expenditure of moneys raised by taxation and may therefore question the constitutionality of statutes requiring expenditures of public money. In addition, the Court took note that Pascual was the governor of Rizal, a most populated political subdivision and whose inhabitants bear a substantial portion of the burden of taxation.

FUNDAMENTAL PRINCIPLES OF TAXATION

Rule of uniform taxation does not deprive Congress of power to classify tax subjects

The Constitution provides that, "The rule of taxation shall be uniform."[19] However, the rule of uniform taxation does not de-

[16] TAÑADA & CARREON, *op. cit.*, p. 410.
[17] G.R. L-21897, Oct. 22, 1963.
[18] G.R. L-10405, Dec. 29, 1960.
[19] Art. VI, Sec. 22(i).

prive Congress of the power to classify subjects of taxation, and only demands uniformity within the particular class. This was the Supreme Court's ruling in *Tan Kim Kee vs. Court of Tax Appeals.*[20]

Petitioner Tan had argued that to interpret Republic Act No. 612 as exempting agricultural products from sales taxes "in their original form" only, would mean that planters and farmers would pay a higher tax than rice mills and coconut factories. The Court said this interpretation does not violate the principle of uniformity.

Imposing license fee and tax for revenue does not amount to double taxation

Another fundamental rule of taxation is that which prohibits double taxation.[21] The case of *Tabacalera vs. City of Manila* [22] showed when double taxation is "more apparent than real." Here the plaintiff company, as liquor dealer, paid license fees under Ordinance No. 3358 of Manila. As wholesale and retail dealer of general merchandise, including liquor, it also paid sales taxes required by Ordinances Nos. 3634, 3301 and 3816.

The city treasurer of Manila wrote to plaintiff's accounting-auditing firm that liquor dealers paying the annual wholesale and retail fixed tax under Ord. No. 3358 were not subject to wholesale and retail dealer's taxes prescribed by Ord. Nos. 3634, 3301, and 3816. Upon learning this, Tabacalera demanded refund for alleged overpayment on account of double taxation.

Resolving this issue, the Court held there was no double taxation. Under Ord. No. 3358, what was collected was a license fee for the privilege of engaging in the sale of liquor, a calling in which not everyone may engage freely, considering the effect of liquor on public health and morals. The three other ordinances were for a different purpose; they constitute tax for revenue, based on sales. It is clearly settled that both license fee and tax may be imposed on the same business or occupation, or for the selling of the same article.[23]

The mistaken view of the city treasurer, added the Court, was immaterial because the government is not bound by errors or mistakes committed by its officers, especially on matters of law.

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[20] G.R. L-18080, April 22, 1963.

[21] Note, however, that no tax has yet been invalidated by the Supreme Court as constituting a forbidden double taxation. 2 TAÑADA & CARREON, *op. cit.*, p. 136.

[23] Court cited Bentley Gray Dry Goods v. City of Tampa, 137 Fla. 641, 188 Co. 758; 9 MCQUILLIN, MUNICIPAL CORPORATIONS 83 (3rd ed).

Petition to restrain city treasurer from levying on properties to pay taxes denied

Calo vs. Magno [24] reenforced the axiom that no action lies to enjoin the collection of a tax. Here the issue involved mainly the authority of respondent to collect taxes. Petitioner claimed that the former had no authority because his designation as acting treasurer was contrary to the Charter of Butuan City, and therefore void.

Petitioner based his claim on the fact that duly appointed city treasurer was Quirico Battad Sr. But Battad was detailed in the Department of Finance, Manila, and the President of the Philippines then appointed Magno as acting treasurer, who took his oath without objection from Battad.

The Court therefore decided that Battad had abandoned his office as city treasurer, resulting in a vacancy which under Sec. 1 of Commonwealth Act No. 588 the President could validly fill. Sec. 18 of the Charter of Butuan City no longer applied because it was not a case where Battad was merely absent or sick or unable to act. Respondent's appointment was held valid.

Aside from this, the Court ruled that another reason petition for injunction—to restrain respondent from enforcing order of restraint and levy on petitioner's properties for payment of real property taxes—should be dismissed, is that the collection of taxes could not be enjoined.

EXEMPTIONS FROM TAXATION

It is the universal rule, said the Court in *Surigao Consolidated Mining Company vs. Collector*,[25] that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken.[26]

MRR is exempt under its charter

In *City of Cabanatuan vs. Gatmaitan*,[27] the company paid under protest taxes on its lots located in Cabanatuan City. But the Court later upheld the company's claim that it is exempt from real estate taxes under its Charter and ordered the city to refund the tax paid with interest.[28]

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[24] G.R. L-18399, Feb. 28, 1963.
[25] G.R. L-14878, Dec. 26, 1963.
[26] Court cited Statutory Construction by Francisco, citing in turn Govt. of P.I. v. Monte de Piedad, 25 Phil. 42.
[27] G.R. L-19129, Feb. 28, 1963.
[28] See note 72, *infra*, on question of jurisdiction.

Agricultural products exempt from sales tax

Respondents in *Collector vs. American Rubber Company*[29] claimed refund for sales tax paid on various rubber products produced from its own rubber plantation. The Court of Tax Appeals ordered partial refund, and both parties appealed. The main issue was whether the company was subject to sales tax imposed under Sec. 186 of the Tax Code or exempt under Sec. 188 (b) thereof.

The Court resolved this issue by considering the effect of Republic Act No. 1612. Before passage of this Act, agricultural products whether in their original state or not, were exempt from taxation in order to afford greater coverage of exemptions and to encourage production. During the effectivity of said Act, only agricultural products in their original state were exempt; the exemption no longer comprehended those which passed the process of manufacturing defined in Sec. 194(x) of the Tax Code. But then, after the repeal of said Act by the passage of Republic Act No. 1856, *status quo ante* prevailed; once more agricultural products were exempt whether in their original state or not.

In the instant case, the rubber products involved were produced and sold *before* the effectivity of Republic Act No. 1612. It followed that they were exempt from tax. Refund was ordered.[30]

NAWASA properties exempt from tax

The properties involved in *Board of Assessment Appeals, Province of Laguna, vs. Court of Tax Appeals*[31] was concededly owned by the Government of the Philippines. They consisted of properties turned oper to NAWASA by three municipalities of Laguna, pursuant to Republic Act No. 1383. But petitioner Board maintained they were not exempt from taxes because they were patrimonial properties held in the proprietary character and not in governmental capacity.[32]

Overriding this contention, the Court stressed it never said NAWASA properties were subject to taxation. In exempting from taxation property owned by the Republic, any province, city or municipality, Sec. 3 (a) of Republic Act No. 470 makes no distinction between properties held in sovereign capacity and those possessed in proprietary character. Unless the lawmaker could be shown as intending the contrary, which was not done in this case, the Court reiterated it should not distinguish where the law does not.

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[29] G.R. L-10963 & L-11178, April 30, 1963.
[30] See note 43, *infra*, for variation on this ruling.
[31] G.R. L-18125, May 31, 1963.
[32] City of Cebu v. NAWASA, G.R. L-12892, April 30, 1960.

Soy sauce manufacturer exempt from date of reconsideration

Petitioner in *Silver Swan Manufacturing Co. vs. Commissioner of Customs* [33] applied for tax exemption as a new and necessary industry under Republic Act No. 901. His original application dated February 7, 1957, was for soy sauce and worcestershire sauce; it was denied in its entirety. Petitioner sought reconsideration on August 27, 1957. On October 15, 1957, the Secretary of Finance granted exemption to soy sauce but not worcestershire sauce. The grant was made effective August 27, 1957 only, the day the motion for reconsideration was received by the Department of Finance.

Petitioner questioned this qualification because Sec. 4 of Republic Act No. 901 provides that benefits of exemption of new and necessary industries shall, upon approval of the Secretary of Finance, retroact to the day of filing for exemption.

The Court negated petitioner's contention. The qualification was held valid because it appeared that in the letter for reconsideration of August 27, 1957, new facts and representations were set forth, amounting to a new application, upon which the Secretary based his favorable action as to soy sauce. The Secretary, therefore, did not violate Sec. 4 of said Act.

In the same case, the Court held that a written protest with the Collector of Customs at the time of making payment of the duties under question or within 30 days thereafter was not necessary for a claim of refund. The protest provided for by Sec. 1370 of the Tax Code (now Sec. 2308 of the Tariff and Customs Code), in connection with the refund of customs duties could not be intended as required when the exemption from taxation—the only ground upon which protest could have been made—did not exist until after the duties and taxes in question were paid.

Condonation, equivalent to exemption, must be proved

In the *Surigao Consolidated* case,[34] the Court pointed out that condonation of a tax liability is equivalent and in the nature of a tax exemption. Being so, it should be sustained only when expressed in explicit terms, and it could not be extended beyond the plain meaning of those terms. The petitioner company having failed to prove clearly its contentions that would support condonation, and consequently justify refund of paid taxes, the Court denied its petition.

At issue in this case was the correct application of Sec. 1 (d) of Republic Act No. 81 which provides that all unpaid royalties, ad

[33] G.R. L-17435, June 29, 1963.
[34] *Supra* note 25.

valorem or specific taxes on all minerals mined from mining claims existing and in force on January 1, 1942, and which minerals were lost by reason of the war, were condoned.

Resolving petitioner's claim negatively, the Court decided that said law applied only to those taxes *unpaid* and not those like the petitioner's where the taxes were paid already. Secondly, the loss of petitioner's minerals was not satisfactorily proved as its only evidence consisted of testimony of witnesses who did not have personal knowledge of circumstances leading to the loss. The burden in tax recovery case, said the Court, lies upon the taxpayer to establish the facts showing the illegality of the tax or its erroneous determination.

Social Security System not exempt from customs duty and tax on importation

The Court in *SSS Employees Association vs. Soriano* [35] found occasion to affirm the view of the Secretary of Finance requiring the Social Security System to pay customs duty and tax on its importation. The plea of the SSS for exemption from such duty and tax was denied because the system is not performing strictly governmental function, but rather is a government owned or controlled corporation performing basically proprietary functions.[35a]

Road sub-contractor's tax liability distinct from contractor's

A subcontractor for building a road is not exempt from contractor's tax even if the original contractor also paid a contractor's tax. This is the holding in *P.J. Kiener Co. vs. Commissioner*.[36]

Petitioner here argued that since the original contractor, Fortunato Concepcion Inc., already paid in full the contractor's percentage tax, then petitioner subcontractor should not be held liable anymore. In striking down this contention, the Court ruled that Concepcion's payment did not exempt petitioner from its own liabilty, which is distinct from Concepcion's. The Court opined that if, as petitioner contended, Sec. 191 [37] of the Tax Code operates only once upon the same transaction or undertaking, the perhaps it was Concepcion who should be exempt. The Court, however, hastened to add it was not deciding on Concepcion's liability but only that of subcontractor Kiener's.

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[35] G.R. L-18081, Nov. 18, 1963.

[35a] But note in the NAWASA case, note 31, *supra*, the Court did not make this distinction.

[36] G.R. L-16417, Jan. 31, 1963.

[37] Referring to percentage tax on road, building, irrigation, artesian wells, waterworks and construction work contractors, etc.

Kapok "manufacturer" not producer of raw kapok

The Court ruled in *Oriental Kapok Industries vs. Commissioner* [38] that petitioner was not exempt under Sec. 188 (b) of the Tax Code because it is neither the producer of raw kapok nor the owner of the land where it was produced. It merely engaged in the business of buying unhusked kapok and processing it into clean, light kapok for sale to mattress makers.

As such, the Court also held that petitioner could be classified as a manufacture as defined in Sec. 194 (x) of the Tax Code. The finished product, argued the Court, was definitely different from the unhusked kapok pods which petitioner purchased initially. Even granting that the process was not "manufacturing" as ordinarily understood, still this makes petitioner a "producer" whose sales of products are taxable under Sec. 186.[39] Petitioner was liable for 7% sales tax.

Proceeds of government bonds not exempt

Sec. 1 of Republic Act No. 1000 exempts from taxation as well as from attachment, execution or seizure the bonds issued under said Act. But the Court ruled in *NASSCO vs. Court of Industrial Relations* [40] that this exemption does not extend to the proceeds of said bonds. Under the principles of statutory construction —*expressio unius, est exclusio alterius,* and, exemptions must be strictly construed—the exemptions of bonds may not be extended by implication to proceeds of the sale of bonds. Thus, on the main issue of this case, the Court held that NASSCO funds are not public funds as it has a separate corporate identity [41] and that its funds—even if derived from sale of exempt bonds—could be garnished.

Exception to rule on agricultural products because of Republic Act No. 1612

While in the *American Rubber case* [42] the Court held that agricultural products were exempt under Sec. 188 (b) of the Tax Code, a different ruling was reached in the *Tan Kim Kee case.*[43] Petitioner Tan paid sales taxes under Sec. 186 of the Tax Code, and also the fixed taxes under Sec. 186 of the Tax Code for his copra which had been sundried or kiln-dried. He sought refund as, he argued, he was exempt. But his claim was denied because the case covered

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[38] G.R. L-17837, Jan. 31, 1963.
[39] See Ngo Sieh v. Collector, G.R. L-8989, Oct. 18, 1956.
[40] G.R. L-17874, Aug. 31, 1963.
[41] Pursuant to Sec. 2, Executive Order No. 356, 46 O.G. 4677.
[42] *Supra* note 29.
[43] *Supra* note 20.

facts that occurred while Republic Act No. 1612 was still operative. This Act exempted only agricultural products in their original state, and therefore limited the area of exemption for the purpose of increasing revenue. Thus, although copra is an agricultural product, it was held taxable.

APPLICATION OF THE TAX CODE

A. WHERE TAX CODE HELD INAPPLICABLE

Action to collect based on compromise agreement is predicated on contract, not on Tax Code

The issue In *Republic vs. Far East American Commercial Co.*[44] is whether an action is a tax collection case or the enforcement of a contractual liability. The facts showed that the Commissioner of Internal Revenue had demanded from defendant company payment of the deficiency sales taxes on gross sales for 1946-47. The parties reached a compromise, payment having been guaranteed by the Manila Underwriters Insurance Company. When defendants failed to pay, the Commissioner filed a complaint praying that judgment be rendered declaring the bond forfeited and defendants to pay the tax due.

In affirming judgment for the plaintiff, the Court held that the action is one predicated on contract and no longer a case to collect taxes. It followed that the applicable law, especially as to prescriptive period, is not the National Internal Revenue Code but the Civil Code.

Payment of tax by mistake amounts to solutio indebiti

Plaintiff in *Puyat vs. City of Manila*[45] paid to the City Treasurer the assessed retail dealer's tax without protest. But later plaintiff claimed refund of taxes because plaintiff, a furniture manufacturer and seller, was exempt from the aforementioned tax. Defendant did not question the exemption but argued that taxes paid without protest were not refundable.

It would seem clear, said the Court, that the taxes were paid by mistake. This placed the payment within the Civil Code provision on *solutio indebiti.* For, from the very start, the defendant had no right to demand from plaintiff payment of the retailer's tax.

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[44] G.R. L-17475, Feb. 38, 1963.
[45] G.R. L-17447, April 30, 1963.

On the issue of protest as condition *sine qua non* to recovery, the Court said that this requisite under Sec. 76 of the Chapter of Manila relates to assessment, collection and recovery of real estate taxes only. It is not applicable to the recovery of retail dealer's taxes.

As a case of *solutio indebiti,* the Court further ruled on the applicable prescriptive period. Under Art. 1145, the New Civil Code prescription on action upon quasi-contracts like *solutio indebiti,* is six years; but under Act No. 190, the prescrptive period was 10 years. The Court decided in this case that payments paid before August 30, 1950 already prescribed. Regarding payments made after said date, action also prescribed as to those made before October 30, 1956 only; prescription was interrupted as to those after said date by written extrajudicial demand.

Municipal or local license fees not comprehended by prescriptive period in Sec. 306 of Tax Code

One of the issues raised in *Santos vs. Caloocan,*[46] is the application of Sec. 306 of the National Internal Revenue Code which requires that action for recovery of taxes against the government must be filed within two years from date the tax was paid. But this case involved an *ultra vires* ordinance that charged internal organ, meat inspection, and corral fees, aside from the legitimate slaughterhouse fee.

Holding that the defendant's reliance on Sec. 306 was untenable, the Court declared that this section refers exclusively to claims for refund of "national internal revenue tax" erroneously or illegally collected. The instant case was not comprehended because the controvery referred to a refund of local and municipal fees only.

B. PARTICULAR CODE PROVISIONS APPLIED

Sec. 30—Expenses in connection with combined medical and business trip

In computing net income, according to Sec. 30 of the Tax Code, there shall be allowed as deductions all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. But in the *Zamora* cases[47] the Court held that where the expenses were incurred during the combined medical and business trip of Mariano Zamora's wife, the allowance of ½

[46] *Supra* note 9.

[47] Mariano Zamora v. Collector, G.R. L-15290; Collector v. Mariano Zamora, G.R. L-15280; Esperanza A. Zamora v. Collector, G.R. L-15289; and Collector v. Esperanza A. Zamora, G.R. L-15281, all promulgated on May 31, 1963.

of the total expenses for deductions was very fair since there was no means by which to ascertain the expenses for business and which was the personal purposes. It was the duty of Zamora to substantiate with receipts or records his claim for deductions as business promotion or entertainment expenses, which duty he did not do.

Allowance of 2½ % depreciation of a hotel building based on Bulletin F, a publication of the U.S. Federal Internal Revenue Service, was held correct. The Bulletin, according to the Court, has strong persuasive effect, although not binding, since it was the result of scientific studies in the United States whose income tax law is the basis of the Philippines' own. The Court are permitted, added the decision, to look and investigate antecedents and legislative history of statutes in question.[48]

Application of the Ballantyne Scale of Value was also held valid, to determine undeclared capital gains derived from purchase of certain properties bought in 1944 with part Japanese notes and part Philippine genuine currency, which properties were later sold in 1951.

Sec. 157—Manufacturer's not wholesale price related to specific tax

Petitioner company in *La Dicha Cigar & Cigarette Factory vs. Collector*[49] sought refund of tax paid under a disputed assessment. The dispute arose because petitioner produced and sold king-size cigarettes at a uniform wholesale price of ₱7.60 per thousand, and paid only ₱4.00 specific tax for every thousand. Upon investigation, however, it was found that the specific tax should have been ₱6.00 per thousand and additional assessment was imposed.

In rejecting the bid of petitioner to refund tax paid on the additional assessment, the Court explained that in 1953 the basis for the determination of the rate of specific tax applicable on cigars and cigarettes was a sworn statement of the manufacturer showing the price charged "without adding the internal revenue tax." Accordingly, for the manufacturer to be entitled to the application of the proviso of par. (b) of Sec. 137[50] of the Tax Code, it was necessary that the manufacturer's net wholesale price, less the specific tax of ₱4.00 per thousand, be not more than ₱5.50. In this case, petitioner's not wholesale price less specific tax of ₱4, was

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[48] Director v. Abaya, 63 Phil. 559.
[49] G.R. L-17830, March 30, 1963.
[50] Sec. 137 provides for specific taxes on cigars and cigarettes. As of the moment, the specific tax under paragraph (b) (1) is eight pesos per thousand; and (2) twelve pesos per thousand.

₱5.60. The difference of 10 centavos made the applicable rate different. The rate of ₱6.00 per thousand, the correct rate then prevailing as imposed by Collector, was upheld.

Sec. 249—Franchise-holder subject to 5% tax where franchise contained no specific rate

Lealda Electric Co. vs. Commissioner[51] was distinguished by the Court from a previous case, Visayan Electric Co. vs. David,[52] where the Court held that the applicable franchise rate was only 2% and not 5%. The distinction lay in the fact that while the franchise of Visayan contained 2% as a specific rate, *Lealda's* had no specific rate. It only provided that the grantee and his successors in interest should pay the same franchise tax imposed upon other grantee at the time the franchise was passed. At that time, the franchise holders were paying only 2% pursuant to Sec. 1508 of the Administrative Code of 1917 and Sec. 10 of Act No. 3636, known as Model Electric Light and Power Act.

But the rate was increased to 5% by Republic Act No. 39, in 1946, which amended Sec. 259 of the Tax Code. This section became the basis franchise tax law not only because it is entitled "Tax on Corporate Franchise' but also because it fixed the rate of Franchise tax to be paid by holders of all existing and future franchise. The provisions of Republic Act No. 59, amending Sec. 259 and increasing the franchise tax to 5% must apply to petitioner as his franchise was already existing the time of the amendment.

Sec. 332—Time consumed for reconsideration and reinvestigation deducted from 5-year period

At issue in *Republic vs. Lopez*,[53] was whether the five-year prescriptive period fixed by Sec. 332 had already elapsed, and whether the time limit set by defendant was binding and operative.

It appears that defendant filed an income tax return in 1950 from which deficiency income tax of ₱245,190.29 was assessed by the BIR on November 13, 1952. Defendant moved for reconsideration, and the assesment was substantially reduced. He promised to pay on July 31, 1954 But later he pleaded for reinvestigation, once again failed to pay despite demand, and asked for a third reinvestigation. BIR acceded to this third request provided defendant waived the statute of limitations. But defendant, instead of executing an unconditioned waiver imposed as deadline the day of December 31, 1957, within which the government should finish the third

[51] G.R. L-16428, April 30, 1963.
[52] G.R. L-5157, April 27, 1953.
[53] G.R. L-18007, March 30, 1963.

reinvestigation. Ignoring this deadline, on March 23, 1960, BIR issued assessment demanding payment for deficiency of income tax for 1950. Defendant now questioned this assesment, pleadig prescription.

First, the Court affirmed a ruling [54] that the five-year prescriptive period fixed by Sec. 332 (c) of the Tax Code within which the Government may sue to collect an assessed tax is to be counted from the last revised assessment asked by the taxpayer. In the Instant case, the first revised assessment was on May 29, 1954. The action was filed on August 30, 1960. Between these dates, ruled the Court should be deducted the time consumed in considering and deciding the taxpayer's petition for reconsideration and reinvestigation—a period lasting from January 16, 1956 to April 22, 1960. Therefore, less than 5 years can be counted against the government.

Moreover, the Court said, the fixing by the taxpayer of a prescriptive period not beyond December 31, 1957 only, was less than the 5 years prescribed by the Tax Code. BIR could not validly agree to such reduction of a prescriptive period provided by law.

The foregoing rule appears well entrenched now.

In *Commissioner vs. Moran Sison,*[55] the respondents contested the validity of assessment imposed as deficiency tax returns arising from gains due to assignment of real properties in exchange for shares of capital stock in a corporation. The original tax return was made on February 28, 1949; the first reinvestigation was in 1952, but the last assessment after reinvestigation was on October 15, 1956.

Denying their plea of prescription, the Court said, it is a settled rule now that the five-year period under Sec. 332 is to be counted from the last revised assessment resulting from a reinvestigation asked for by the taxpayer. Where the taxpayer demands a reinvestigation, the time employed for reinvestigation should be deducted from the five-year period.

Sec. 306 applicable where taxes are erroneously or illegally collected but not where due and unpaid

The Court held in *Collector vs. Li Yao* [56] that Sec. 306 of the Tax Code did not apply because the amounts sought to be refunded were part of the tax due and unpaid. They were not taxes erro-

[54] Querol v. Collector, G.R. L-16705, October 3, 1962.
[55] G.R. L-13739, April 30, 1963.
[56] G.R. L-11861, Dec. 27, 1963.

neously or illegally collected, which would have called to operation Sec. 306. They were, rather, deficiency income taxes paid during the course of investigation of the taxpayer's income tax deficiences.

APPLICATION OF THE NET WORTH METHOD

The net worth method to based on an accounting formula that an increase in net worth plus non-deductible expenditures minus non-taxable receipts equals the taxable net income. This method is authorized under Sec. 38 of the National Internal Revenue Code [57] and the determination of tax deficiencies by the Government is *prima facie correct.*[58]

Upheld where returns were considered self-serving and fraudulent

Petitioner in *Avelino vs. Collector* [59] questioned the net worth method used by respondent in determining his taxable income in the beginning of 1946. He claims that his wife made it appear that she netted a profit of ₱55,000 and this was a cash net worth.

However the return did not show how the amount was earned. None of that amount was deposited in a bank, and this was not explained. The court below did not, therefore, give credence to the existence of the cash net worth, and upheld the use by the Collector of the net worth method.[60]

Upholding the lower court's decision, the Supreme Court said the court a quo was right inasmuch as the wife's return was apparently considered self-serving statement, and there was no explanation how the gains were used or invested.

The Court also held that the act of petitioner in declaring a very much reduced income than what he actually earned, justified the finding that there was fraud subject to be penalized by law. Thus, the period within which he might be subjected to liability begun from the moment fraud was discovered and not when the income tax return was presented.

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[57] Sec. 38 provides the general rule, under Chapter V, *Accounting and Methods of Account.* In part, it says, ". . . if a method employed does not clearly reflect the income, the computation shall be made in accordance with such methods as in accordance with the opinion of the Collector of Internal Revenue does clearly reflect the income."

[58] Perez v. Court of Tax Appeals, G.R. L-10507, May 30, 1958.

[59] G.R. L-17715, July 31, 1963.

[60] See Commissioner v. Enrique Avelino, G.R. L-14847, Sept. 19, 1961 also sustaining the net worth method, where taxpayer was a mere "rancher" and the alleged creditor did not know him.

Inventory method authorized under Sec. 15 when the taxpayer hides his income

In another *Li Yao* case,[61] the Court ruled that if a taxpayer commits a violation of law, hiding his income to evade payment of taxes, the Government must be permitted to use all evidence and sources available to determine his said income, so that the income tax may be collected for public purposes.

The use of the inventory method (also called the net worth method of inventory) was justified in this case under Sec. 15, which provides *inter alia* that "when there is reason to believe that any such report [62] is false," incomplete or erroneous, the Commissioner of Internal Reevnue shall assess the proper tax on the best evidence obtainable.

The Court stated that the existence of assets or properties appearing in the name of the taxpayer or in the name of his dummies or friends, without the taxpayer being able to give a definite reasonable explanation for their existence justifies the Tax Court and the Supreme Court in the use of the inventory method.

The burden of proof as to disapproved various items alleged as obligations, must be proved by the taxpayer. The burden of proof does not lie in the government because the taxpayer has the means of proving them and it is natural that he would supress any evidence to show his tax liability. Parallel to rules on evidence, the taxpayer who claims obligations and that they still exist must prove their existence by a preponderance of evidence.

Furthermore, the Court negated the claim of defendant that the assessment should be spread over the period of deficiency assessment, 1945-1951, and not applied solely during the particular year in which the questioned income appeared. Section 39 of the Tax Code requires the taxpayer to report to the Collector yearly the income that he gets during the year from whatever source. The presumption is that the income was earned at the time that it appeared in the possession of the taxpayer.

Should spreading the taxes over the years 1945-1951 be allowed, the Court would be violating the rule that the taxpayer report his income in the year it was earned. The taxpayer would be encouraged to hide his income because in any case, if discovered afterwards, the same income, although appearing in one year, would be distributed over a period of years. As in the instant case, moreover, distribu-

[61] Li Yao v. Collector, G.R. L-11875, Dec. 28, 1963.
[62] Required by law as a basis of assessment for any national internal revenue tax.

tion would result in substantial reduction of the tax due, to the prejudice of the state.

What is the effect of self-serving statement in connection with one's net worth?

As in the *Avelino* case,[63] regarding cash net worth, the Court held in the first *Li Yao* case [64] that his statement contained in his naturalization application saying he was in business since 1940 is self-serving and was not competent evidence as to his net worth. Moreover, this statement contradicted his claim of income for the years before 1940, certified to by a BIR examiner.

But the certificate of the BIR examiner as to Li Yao's income was also held unworthy of credit and was inadmissible. The certificate was allegedly based on the working papers of said examiner, but these papers were not produced. Even if produced, to be credible, those papers must accompany the original documents from where they were taken; both papers and documents must be introduced in evidence.

PAYMENT OTHER THAN MONEY

The general rule is that the payment for a tax must be in legal tender, meaning in money. However, exception may be provided for by statute.

Negotiable land certificates must be payable on demand

Sec. 10 of Republic Act No. 1400 expressly authorizes the use of negotiable land certificates for the payment of tax obligations of the holder thereof. But in [65] the Court stated *Buenhamino v. Hernandez,* that this meant the certificates must be those strictly issued in accordance with Sec. 9 thereof: the instrument must be payable on demand. Thus, where they can be presented for payment only after five years had elapsed from date of issue, the certificates could not be used for payment of realty taxes.

The Court stated further that the period provided for was contrary to law. The refusal of respondent treasurer to accept the certificates was justified. For the law provides that the certificates must be payable on demand, which means one which (a) expressed to be payable on demand, at sight, or on presentation; or (b) expresses no time for payment.[66]

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[63] *Supra* note 59.
[64] G.R. L-11861, Dec. 27, 1963.
[65] G.R. L-14883, July 31, 1963.
[66] Sec. 7, Negotiable Instruments Law.

The agreement between petitioners and the Land Tenure Administration (the government agency that issued the certificates as payment of 50% of the price of land sold to LTA by petitioners) to the effect that petitioner could use said certificates *within* 5 years of issue to pay obligations in favor of the government was held ineffective.

Backpay certificates cannot be used by mere assignee to pay his tax

Petitioner in *Borja v. Gella*[67] wanted to apply in payment of his real estate taxes due to Manila and Pasay cities two negotiable backpay certificates. But he was a mere assignee of the certificates. The city treasurers of both cities refused to accept the certificates.

The issues brought to court were: (1) whether petitioner had a right to apply the certificate in payment of taxes; and (2) whether compensation could be invoked.

The Court said no to both.

Sec. 2 of Republic Act No. 304, as amended by Republic Act No. 800, is explicit in that a backpay certificate to be usable in payment of an obligation, the obligation must be subsisting at the time of the Act's approval, June 18, 1948. The obligation here, however, was for taxes since 1958 only.

Moreover, the law provides that to have such payment allowed, the tax must be owned by the applicant himself, not a mere assignee. The right to use the backpay certificate in settlement of taxes is given only to applicant (the original holder), and not to any other holder whose right is to have it discounted under certain limitations.

Finally, compensation could not be applied in this case because the element of two persons who, in their own right, are creditors and debtors of each other, was absent. As to taxes, the creditors were Manila and Pasay cities; the debtor was the petitioner. But as to the certificates, while petitioner was the creditor, the debtor was not Pasay nor Manila, but the Republic of the Philippines, which has a separate legal personality.

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[67] G.R. L-18330, July 31, 1963. But there is a distinction in the use of land certificates and backpay certificates. While "only an *original backpay certificate holder* can apply it in payment of taxes to which they are directly and personally liable," "negotiable land certificates may be accepted in payment of the specific tax due on one's products, provided that he is *holder in due course* of said certificate pursuant to the Ruling of the Secretary of Finance dated March 19, 1959."—BIR Ruling No. 52, January 29, 1959; and BIR Ruling No. 369, s. 1959 (underscoring supplied).

SALES TAX CASES

Under contract of distributorship sales tax based on wholesale price

The issue in *Commissioner v. Ramcar, Inc.*[68] was whether the percentage sales tax should be based on the wholesale price or on the buying price paid by the purchasers. This issue, said the Court, hinged on whether the contract between Ramcar and Henderson Trippe (Phil.) was agency or not.

The facts showed that Ramcar engaged in importation, manufacturing and selling of automobiles. Henderson Trippe was designated its exclusive distributor of Hillman Minx automobiles. Ramcar sold to Henderson said cars; Henderson sold them to third parties. Ramcar paid 30% sales tax based on the wholesale price, but Collector assessed deficiency taxes based on 50% sales tax due on price paid by ultimate buyers.

Affirming cancellation of the deficiency assessment, the Supreme Court agreed with the Tax Court that the contract was one of sale and not of agency. As to alleged direct delivery of cars made by Ramcar to buyers, it was found that Henderson failed to put up a showroom so Ramcar had to put the display as a temporary arrangement. The failure of Ramcar to comply with the distributor's contract for delivery of 12 cars a month was due to Central Bank regulations on import, beyond Ramcar's control. That two other distributors were appointed was no violation of the contract with Henderson because Ramcar had the right to withdraw the distributor's territory or any part thereof.

Simple indication on invoice held not a separate billing as required

Petitioner in *Connell Bros. Co. v. Collector*[69] was engaged in the importation of general merchandise. Its sales invoices showed only a single amount with a notation, 5% tax included. Thus, for goods worth ₱100, petitioner would compute 5% tax as ₱5; charge the customer ₱105, and write in the invoice ₱105, 5% tax included; and to the Collector, would pay ₱5 as tax. Now Collector assessed a deficiency tax, saying that computation should be based on ₱105 actually charged to the customer and the tax should therefore be ₱5.25. Petitioner assailed this computation.

Upholding the Collector's method, and the deficiency tax assessed, the Court explained that under Gen. Circular No. 431 and

[68] G.R. L-16691, July 31, 1963.
[69] G.R. L-15470, Dec. 26, 1963.

440, separate billing is required. This means that the amount of the tax must be stated as an item apart. Circular No. 440 emphasizes that "unless billed to purchaser as separate items in the invoices, the amounts intended to cover the sales tax shall be considered a part of the gross selling price of the articles sold and deductions thereof will not be allowed." A simple indication in the invoice that "5% tax was included" could not be considered a separate billing.

However, the Court held that petitioner company was not guilty of intentional violation of the law but only misunderstood the applicable regulation. A 25% surcharge was not justified.

PROCEDURAL QUESTIONS

Does absence excuse taxpayer from surcharge and interest?

The Court said no in *Republic v. Lewin.*[70] Here defendant argued that since he was in the United States when assessment notice was issued, he was not duly notified and he was not in default. But the Court found that the assessment was sent to him in the address given in his tax return. Defendant's counsel acknowledged receipt of assessment notice by Mrs. Lewin and advised the Collector that Lewin was willing to pay as soon as he arrived from the United States.

Absence, concluded the Court, did not render the requisite payment of taxes impossible. Thus, Lewin was held liable not only for the tax assessments voluntarily paid, but even for 5% surcharge and 1% monthly interest thereon.

In what cases does the Court of Tax Appeals have jurisdiction? [71]

1. Denied in case involving refund of assessment under Assessment Law.

In the *City of Cabanatuan* case,[72] the Supreme Court clarified the extent of the jurisdiction of the Court of Tax Appeals. Under Sec. 7 of Republic Act No. 1125, the CTA is given exclusive appellate jurisdiction to review by appeal (1) decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, or other matters arising under the National Internal Revenue Code; (2) decisions of the Commissioner of Customs

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[70] G.R. L-17173, April 30, 1963.

[71] See 37 PHIL. L. J. 3 (1962) for discussion of *Mechanics, Jurisdiction and Achievements of the Court of Tax Appeals*, by Miguel R. Navarro.

[72] *Supra* note 27.

in cases involving liability for customs duties or other matters arising under the Customs Law; and (3) decisions of provincial or city board of assessment appeals or other matters arising under the Assessment Law. If the case involves a matter not enumerated or contemplated above, the Court held, it is not appealable to the Court of Tax Appeals; it comes under the jurisdiction of the Court of First Instance.

Thus, in the instant case involving the refund of real estate taxes assessed and collected by the treasurer of Cabanatuan by virtue of the Assessment Law, the Court held the CFI had jurisdiction. The Court said that since Republic Act No. 1125 allows only the refund of an internal revenue tax, refund on customs duties and real estate taxes that come under the Customs Law and Assessment Law, respectively, are necessarily excluded from the jurisdiction of the Court of Tax Appeals. *Exclusio unius est exclusio alterius.*

2. Court of Tax Appeals can grant motion for execution of judgment rendered by Board of Tax Appeals.

At issue in *Ipekdjian Merchandising Co. v. Court of Tax Appeals* [73] was whether the CTA could validly grant a motion for execution of a judgment previously rendered by the Board of Tax Appeals.[74]

Petitioners argued that Sec. 21 of Republic Act No. 1125 was not applicable, that pending cases referred to therein are those still to be heard and decided by the Tax Court and that the instant case, having become final and executory before the act became a law, was not comprehended.

The Court dismissed this argument, and with it the petition. Administrative orders cannot be enforced in the absence of express statutory provisions for that purpose, but there are cases where statutes provide for the judicial enforcement of such orders, sometimes by provisions for transfer of the administrative record and decisions to a court, for the entry of judgment and sometimes by actions for penalties for violation of orders or by actions to enforce reparation awards.[75]

In this case, the administrative records of the Board of Tax Appeals were automatically transferred to the Court of Tax Appeals

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[73] G.R. L-14791, May 30, 1963.

[74] Note that the Board of Tax Appeals was created by Executive Order No. 401-A, which was held constitutionally defective in U.S.T. v. Board of Tax Appeals, G.R. L-5701, June 23, 1963; 49 O.G. 2245. Consequently, Rep. Act No. 1125 was passed, creating the Court of Tax Appeals.

[75] 42 Am. Jur. 528.

upon its creation. Moreover, Republic Act No. 1125 conferred judicial character on proceedings and decisions of the Board. In cases not subsequently brought before the court of first instance[76] or before the Tax Court, under the Act, within the 30-day period prescribed under Sec. 11 hereof, decisions of the Board received judicial confirmation under said Act, and the same should be considered final and executory and enforceable, just like any other court decision.

Further, the Court held that cases then pending before the Board over which the Tax Court acquired jurisdiction included not only those filed and not heard yet or filed and heard and not yet decided but even also those filed, heard, decided and not yet executed. "The suit does not terminate with the judgment; and all proceedings on the execution are proceedings in the suit. . ." [77]

Does principle of res judicata *apply to decision of Board of Tax Appeals?*

Petitioner in the second *Ipekdjian* case [78] claimed that the principle of *res judicata* is applicable only to judgments rendered by a court and does not extend to decisions of administrative agencies like the Board of Tax Appeals devoid of judicial functions. Rejecting this claim, the Court said that to say *res judicata* applies exclusively to decisions rendered by courts would be to unreasonably circumscribe the scope thereof. The more equitable attitude is to allow the extension of the defense to decisions of bodies upon whom judicial power have been conferred. The decisions of the Board of Tax Appeals which, though administrative in character, were judicially confirmed by virtue of R. A. 1125, assumed the character of decisions of regular courts.[79]

The Court added that petitioner could not by mere superficial change of the form of his action, plead the non-application of bar by prior judgment. All requisites for defense of *res judicata* were held present.

Will failure to appeal to Tax Court constitute waiver and amount to estoppel?

In *Republic v. Lopez*,[80] the Court held that the proper remedy for a taxpayer against a disputed assessment was to appeal the ruling of the Collector of Internal Revenue to the Court of Tax Appeals.

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[76] In accordance with *U.S.T. v. Board of Tax Appeals*, note 74, *supra*.
[77] Court cited U.S. v. Halstead, 6 L. Ed. 264-267.
[78] *Ipekdjian Merchandising Co., Inc. v. Court of Tax Appeals*, G.R. L-15430, Sept. 30, 1963.
[79] See first Ipekdjian case, note 73, *supra*.
[80] *Supra* note 53.

Failure on Lopez's part to appeal the Collector's ruling was a waiver of the defense against it and consequently estops the taxpayer from raising objections thereafter. Otherwise the period of 30 days for appeal to the Tax Court would make little sense.

When is appeal to Board of Assessment Appeals considered futile?

In the *Cabanatuan* case,[81] the Court ruled that when the assessment in question was made the assessment could have been appealed to the City Board of Assessment Appeals, pursuant to Republic Act No. 1125. But MRR found no alternative but pay because the city pressed for payment and warned the company that if it failed its properties would be forfeited to the city. Once payment was made, it was futile for the taxpayer to appeal to the City Board of Assessment Appeals for its jurisdiction was confined merely to determining the reasonableness of assessment or taxation of property. It has no authority to require refund of tax on property under the Assessment Law, unlike in cases involving internal revenue taxes.

Which court has jurisdiction over claims against estate of deceased person, including tax?

Petitioner Domingo, in *Domingo v. Garlitos*,[82] wanted to execute judgment against the estate of deceased Scott Price, in favor of the government, for the sum of ₱40,058.55 as inheritance taxes.

Denying the petition for execution of judgment, the Court held that the ordinary procedure to settle claims against estate of deceased person, including an inheritance tax, is for the claimant to present the claims before the probate court so that the court may order the administrator to pay the amount thereof. In testate or intestate proceedings to settle estate of decedent, properties belonging to the estate are under the jurisdiction of the probate court, and jurisdiction continues until the properties are distributed to the heirs. The estate during pendency of proceedings is in *custodia legis*. The proper procedure in case of a court judgment as in the case at hand is not to allow the sheriff to seize properties but to ask probate court to require administrator to pay the amount due from the estate.

Can compensation be allowed to set-off tax due with claims for services rendered?

Continuing, the Court in the *Domingo* case held that another ground to deny petition was that compensation had taken place by

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[81] *Supra* note 72.
[82] G.R. L-18994, June 29, 1963.

operation of law.[83] This was because the claim of the estate for ₱262,200 on account of services rendered by Scott Price to the government had already become due and demandable as well. The government already recognized the estate's claim and had appropriated by law the corresponding amount. The estate and the government, therefore, were, in their own right, creditors and debtors of each other.[84] Compensation would be allowed.

What is the effect of filing criminal suit on pending appeal?

Petitioners in *Caparas v. Ofiana* [85] was charged with violation of the Internal Revenue Code and the Tariff & Customs Code. They claimed the provincial fiscal of Bulacan had no jurisdiction to call a preliminary investigation as the offense charged was allegedly committed in Ilocos Sur, and asked for prohibition which was granted but later set aside; hence this appeal. Subsequently, while appeal was pending, the fiscal filed an information charging petitioners with the same offense, subject to preliminary investigation.

Sustaining the respondent's view that the appeal had become academic and that the issue of jurisdiction involved in the appeal could now be raised in the criminal case, the Court stressed that a special civil action of prohibition is proper only a showing that the aggrieved party has no remedy in the ordinary course of law. As petitioners now had the right to raise the issue of jurisdiction in the criminal case, the appeal was purely academic and was dismissed.

Defense of client does not authorize attorney to state as fact a mere hope

Republic v. Cloribel [86] involved Vicente Kho, an alien, who was found to have wilfully and fraudulently evaded the payment of taxes. A habeas corpus petition was filed after his arrest prior to deportation, upon belief of Kho's counsel that the President of the Philippines would reconsider or suspend the order of deportation of Kho upon settlement of his tax liabilities. This hope did not materialze.

Counsel should be reminded, according to the Court, that the defense of a client does not require or authorize the attorney to state as a fact what he merely expects or hopes to accomplish. Order granting bail was annulled.

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[83] Arts. 1279 and 1290, NEW CIVIL CODE.

[84] See *Borja v. Gella*, note 67, *supra*, where compensation was not allowed because of this element.

[85] G.R. L-21614, Oct. 31, 1963.

[86] G.R. L-120458, Oct. 31, 1963.