ANNUAL SURVEY OF SUPREME COURT DECISIONS ON TAXATION

FRANCISCO G. TAGAO *

> The power to impose taxes is one so unlimited in force and so searching in extent, that the courts scarcely venture to declare that it is subject to any restriction whatever, except such as rest in the discretion of the authority which exercises it. It reaches to every trade or occupation; to every object of industry, use, or enjoyment; to every species of possession; and it imposes a burden which, in case of failure to discharge it, may be followed by seizure and sale or confiscation of property. No attribute of sovereignty is more pervading, and at no point does the power of government affect more constantly and intimately all the relation of life than through the exactions made under it.—Cooley Constitutional Limitations (8th ed.), p. 986.

I. INTRODUCTION

Primitive man is ambulatory by necessity. He has to grapple with the forces of nature for survival. As man becomes sedentary and learns to tap the vast resources of nature, a semblance of order in his life comes into being. Government is established. And with the establishment of government, his rights to life, liberty and property are secured and protected. But with these security and protection, concomitant obligations are demanded of him. One of them is the duty to pay taxes. Eventually, man realizes as inevitable that "Taxes are what we pay for civilized society." [1] For the power to tax is an essential part of the power to govern.[2]

The advent of modern governments has resulted in expenditures of staggering proportions. These expenditures have to be supported by taxes. But the taxpayers are most often not too willing to fulfill their obligations. They have devised every ingenious means of avoiding the payment of taxes. The cases decided by the Supreme Court illustrate man's attempt to avoid the payment of taxes and the government's tenacity to collect them. The Court has not been remiss in its duty as the arbiter of the apparent conflict between the taxpayers and the government, "if the battle is to be carried on in a fair and equal way." [3] Majority of the cases are a reiteration of previous rulings, and clarification of the tax laws. Some of the

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* Vice-Chairman, Student Editorial Board, *Philippine Law Journal*, 1964-65.

[1] Compañia General v. Collector of Int. Revenue, 275 U.S. 87, 100.

[2] Walton H. Hamilton and Douglas Adair, The Power to Govern (1937), pp. 131-144.

[3] Vegelahi v. Guntner, 44 N.E. 1077, 1081 (1896) dissenting opinion of Justice Holmes.

cases are distinguished from previous pronouncements and another case is of first impression in this jurisdiction.[4]

II. NATURE, EXTENT AND LIMITATION

The power of taxation rests on necessity, and is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent state or government. Such power is an inherent one, and is not dependent on any grant by the constitution, or the consent of the owners of property subject to taxation; constitutional provisions with respect to taxation constitute a *limitation* on the legislative power and *not a grant of power*.[5] The power to tax rests primarily in the state, to be exercised by its legislature, and the state may exercise the power directly or may delegate such power to political subdivisions of the state. The exercise of the taxing power is a high government function, *in invitum* in nature. Generally, the power of taxation is as extensive as the range of subjects over which the power of the government extends.[6] So great is the power to tax, that Chief Justice Marshall refers to it as one which involves the power to destroy.[7]

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[4]Commissioner of Internal Revenue v. Lednicky, et al., G.R. Nos. L-18169, 18262 and 21434, July 31, 1964.

[5] The Constitution provides certain limitations on the power to tax. Among them are the following:

1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws (Sec. 1(1), Art. III). Some of the cases in point are Lopez v. Director of Lands, 43 Phil. 23; Yu Cong Eng v. Trinidad, 271 U.S. 5000, 70 L. ED. 1059.

2. The rule of taxation shall be uniform. (Art. VI, Sec. 22(1). Francis Churchill and Tait v. Concepcion, 34 Phil. 969; U.S. v. Sumulong, 30 Phil. 381.

3. No law impairing the obligation of contracts shall be passed. (Art. III), Sec. 1(10). Casanovas v. Hord, 8 Phil. 125; The Eastern Australia and China Telegraph Co. v. Hord, 11 Phil. 280; Mitsui Bussan Kaisha v. Manila Electric Railroad and Light Company, 39 Phil. 624; Manila Railroad Co. v. Rafferty, 40 Phil. 224; Asiatic Petroleum Co. v. Llanes, 49 Phil. 446.

4. All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned the balance, if any, shall be transferred to the general funds of the Government. (Art. VI, Sec. 23(1).

5. No public money or property shall ever be appropriated applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religions teacher or dignitary as such except when such priest, preacher, minister or dignitary is assigned to the armed forces or to any penal institution, orphanage, or leprosarium. (Art. VI, Sec 23(3).

6. Cemeteries, churches, and parsonages or convents appurtenant thereto, and all land, buildings and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation. (Art. VI, Sec. 22(3).

[6] 84 C. J. S., Sec. 4, pp. 41-43.

[7] McCulloch v. State of Maryland, et al., 4 Wheaton, 314, 427 (1819); 4 L. ed. 579, 607.

And a tax is a forced exaction or contribution assessed in accordance with some reasonable rule of apportionment by authority of a sovereign on the persons or property within its jurisdiction, to provide public revenue for the support of the government, the administration of the law, or the payment of public expenses.[8]

III. BASIS OF TAXATION

The theory of taxation is that taxes are imposed for the support of the government in return for the general advantages and protection which the government affords the taxpayer and his property, and broadly speaking, where there is no such benefit, there is no power to tax. However, the taxing power does not depend on the taxpayer's enjoyment of an special benefit from the use of funds raised by taxation. It has been held that taxation proceeds on the theory that the existence of government is a necessity, that it cannot continue without means to pay its expenses, and that for those means it has the right to compel all citizens and property within its limit to contribute.[9]

IV. MUNICIPAL POWER OF TAXATION

A. *Under Rep. Act No. 523 (Charter of Butuan City), the power of Butuan City to impose tax on lumber mills and lumber yards does not include the power to impose tax on sawn, manufactured or produced lumber.*

In the case of *Golden Ribbon Co., Inc. v. The City of Butuan, et al.*,[10] the Court held that under Rep. Act No. 523 (Charter of Butuan City), the power of Butuan City to impose tax on lumber mills and lumber yards does not include the power to impose a tax on sawn, manufactured or produced lumber. So that the ordinance imposing a tax of two-fifths (₱.004) centavo for every board foot of lumber sawn, manufactured or produced is void. The rule is well-settled that municipal corporations, unlike sovereign states, are clothed with no inherent power of taxation; that its charter or a statute must clearly show an intent to confer that power or the municipal corporation cannot assume and exercise it, and that any such power granted must be construed strictly, any doubt or ambiguity arising from the terms of the grant to be resolved against the municipality.[11]

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[8] 12 Am. Jur. (Legal Forms Annotated), 146.
[9] 84 C. J. S., Sec. 2, pp. 36-37.
[10] G.R. No. L-18534, Dec. 24, 1964.
[11] Cu-Unjieng v. Patstone, 42 Phil. 818; Vega, et al. v. Municipal Board, et al., 50 O.G. No. 6, 2456.

B. *Manufactured or sawn lumber is considered as "Forest Products" under Section 263 of the Tax Code, hence municipal corporation is prohibited from imposing it under Rep. Act No. 2264*

In the same case of *Golden Ribbon Co., Inc. v. The City of Butuan, et al., supra,* the Court ruled that manufactured or sawn lumber is considered as "Forest Products" under the provisions of Section 263 of the National Internal Revenue Code, which is embraced in Chapter V, thereof entitled "Charges on Forest Products," as construed by Section VI, Regulation No. 85, Department of Finance. Municipal corporations are prohibited from imposing charges or taxes of such nature.[12]

C. *Character and nature of a tax not determined by title of the act or ordinance imposing it.*

Neither can the tax in question referring to the tax imposed in the case *of Golden Ribbon Co., Inc. v. The City of Butuan, et al., supra* a tax on business or a privilege tax for the operation of a lumber mill or lumber yard. The character or nature of a tax is determined not by the title of the act or ordinance imposing it but by its operation, practical results and incidents.[13] Neither the original ordinance in question nor the amendatory ones show that the tax provided for therein is imposed by reason of the enjoyment of the privilege to engage in a particular trade or business. Neither do they provide that payment thereof is a condition precedent to the enjoyment of such privilege or that its non-payment would result in the cancellation of any previous license granted. The only consequence of its non-payment appears to be the imposition of a surcharge or liability to suffer the penal sanction prescribed in Section 3 of the original ordinance. These circumstances lead to the conclusion that the questioned tax cannot be considered as one imposed upon a party for engaging in the business of operation of a lumber mill or a lumber yard.[14]

D. *A statute or ordinance imposing a tax must do so clearly, expressly, unambiguously and not by implication.*

A statute will not be construed as imposing a tax unless it does so clearly, expressly and unambiguously.[15] It is an ancient principle that a tax cannot be imposed without clear and express words for

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[12] See Section 2(e) of Republic Act No. 2264.

[13] Dawson v. Distilleries, etc., 255 U.S. 288, 65 L. ed. 638; Association of Customs Brokers, Inc., et al. v. The Municipal Board, et al., G.R. No. L-4376, May 22, 1953.

[14] See Note 10.

[15] 82 C. J. S., 956.

that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication.[16]

Thus, in the case of *Marinduque Iron Mines Agents, Inc. v. The Municipal Council of Hinabangan, Samar, et al.*,[17] the Court held that an ordinance enacted by the Municipality of Hinabangan, Samar imposing graduated municipal license fees on any occupation or business in the municipality to any corporation, based on the gross output or sales does not impose a tax. A mere reading of the ordinance discloses that not only are there no words therein imposing a tax but that the peruser is left in doubt whether the intention is to levy a tax for revenue or charge a fee for permitting the business to be carried on; for section 2 declares that the law empowers the Municipal Council of Hinabangan, Samar, to impose graduated municipal license fees. Since the validity of taxes and licenses is governed by different principles, the taxpayer is left in doubt as to the true nature of the charge, and whether he must bear it or not. The rule is that taxes may not be imposed by implication,[18] and a tax statute is to be construed strictly and against the subjection to a tax liability where the question is whether a matter, property or person is subject to the tax.[19] Considering the avoidability of taxes by the citizens, it seems that the least he is entitled to is to be expressly required to pay a tax, which the words of the questioned ordinance do not state. This is particularly true where the ordinance carries a penal provision.

E. *Ordinance is void if it infringes upon the express restrictions placed by the legislature on the taxing power delegated to the municipal or city council under Sec. 2 of Rep. Act No. 2264.*

Ordinance No. 7, Series 1960 of Hinabangan, Samar is invalid because it infringes upon the express restriction placed by the legislature on the taxing power delegated to city and municipal councils. Section 2, paragraph 1 of Rep. Act No. 2264, otherwise known as the Local Autonomy Act, after conferring to cities, municipalities, and municipal districts the power to impose license, taxes and service fees or charges on business and occupation, expressly limited said powers by the following proviso: "Provided that municipalities and munici-

[16] 30 Am. Jur. 153; see also McQuillin on Mun. Corp., Vol. 16, p. 267.
[17] G.R. No. L-18924, June 30, 1964.
[18] Howell v. Dept. of Labor, 222 SW 2d., 953; Olson v. Oklahoma Tax Commission, 180 Pac. 2d., 622; Harrington v. Cobb, 172 ALR, 837; In Re Lunch Rooms, 85 Fed. 2d., 1002; In re California Co., 93 Fed. 2d. 659, cited in the case of Marinduque Iron Mines Agents, Inc. v. Municipal Council, See Note 17.
[19] 82 C. J. S., p. 957.

pal districts shall, in no case, impose any percentage tax on sales or other taxes in any form based thereon."

Even granting that it does impose a tax, the ordinance in question, while not providing for a percentage tax, but graduated tax (the progressive tax therein imposed not being calculated on a percentage of the sales made by the taxpayer), nevertheless, it prescribes a *tax based on sales,* contrary to the statute (Rep. Act No. 2264). It is true that the ordinance purports to base the tax either on "gross output or sales," but the only standard as determined from the "true copies of receipts and/or invoices (which are precisely the evidence of sales that the taxpayer is required to submit to the municipal treasurer [sec. 3]), without deduction being provided for freight insurance, or incidental cost. Directly or indirectly, the amount of payable tax under this ordinance is determined by the gross sales of the taxpayer and violates the explicit prohibition that the municipality must not levy, or impose, "tax in any form based on sales." [20]

F. *Plea of members of the municipal council that they are not attorneys and of low scholastic ability is no excuse.*

The plea that the members of the Municipal Council "are not attorneys and of low scholastic ability" affords no excuse from not observing well-established legal principles. The tax imposing authority is held to know and understand that the levying of taxes is a subject of grave responsibility, and of serious consequences to the taxpayer. Taxation is not merely a matter of wishing before an unused well, or of stroking some wornout lamp.[21]

G. *Section 14(a) of the Charter of Davao City in relation to Section 115 of Com. Act No. 141 authorizes the City of Davao to impose real property tax on public land sold at an auction sale even if title is still in the State.*

In the case of *Francisco, et al. v. City of Davao, et al.,*[22] the Court stated that Section 14(a) of Com. Act No. 51 (Charter of Davao City) in relation to Section 115 of Com. Act No. 141 authorizes the City of Davao to levy and collect real property tax on public lands sold at an auction by the Bureau of Lands even though title still remains in the State. It is true that pursuant to section 26 of the Charter of Davao City, lands owned by the Government of the Philippines, the City of Davao, and the Province of Davao are exempt from taxation. However, insofar as inconsistent with section 115 of Com. Act No. 141 (Public Land Act), said section

[20] See Note 17; see also Sec. 2 of Republic Act No. 2264.
[21] See Note 17.
[22] G.R. No. L-20654, December 24, 1964.

26 must necessarily yield therefrom not only because C.A. 141 reflects a general policy of the government with reference to public lands, in much the same way as Sec. 26 of C.A. 51 reflected the general policy of the State at the time of its enactment, which was necessarily modified by said C.A. 141. Section 115 is explicit in that the public land in question may be "taxed on the basis of the value fixed in the contract" whereby the said land had been granted. In the case at bar, the price is ₱2.50 per square meter, so that its assessment for real estate tax purposes at ₱8.50 per square meter exceeds the amount authorized by law by ₱5.78. The amount collected from the plaintiffs in excess of the tax based on the purchase price of said property should be refunded to the petitioners.

V. VARIOUS TAXES UNDER THE NATIONAL INTERNAL REVENUE CODE

A. PERCENTAGE TAX

(1) *Section 183(a) of the Tax Code imposes the penalty of 25% for delay in the payment of the percentage tax when liability for the tax is undisputed or indisputable.*

In the case of *Connel Bros. Co. (Phil.) v. Collector of Internal Revenue,*[23] the Court held that Section 183(a) of the Tax Code imposes the penalty of 25% when the percentage tax is not paid on time and contemplates a case where the liability for the tax is undisputed or indisputable. In the present case, the delay is with reference to the deficiency owing to the controversy as to the proper interpretation of Circular Nos. 431 and 440 of the Office of the Collector of Internal Revenue. The controversy was generated in good faith, since the office itself appears to have formerly taken the view that the inclusion of the word "tax included" on invoices issued by the taxpayer was sufficient compliance with the requirement of said circulars.

The cases cited [24] in the motion for reconsideration are likewise inapplicable. In every one of those cases the liability for the tax was not disputed, the only question being whether or not the delay in the payment thereof was justified under the particular circumstances relied upon by the taxpayer. Here the question is whether or not the deficiency sales tax in question was due at all. This question does not involve the power of the respondent to condone the

[23] G.R. No. L-15470, March 31, 1964.

[24] Lim Co Chui v. Posadas, 47 Phil. 460; Jamora v. Meer, 74 Phil. 22; Koppel (Phil.) Inc. v. Collector of Internal Revenue, 87 Phil. 348; Republic v. Luzon Industrial Corporation, L-7190, April 28, 1958; Yutivo and Sons Hardware Co. v. Court of Tax Appeals, et al., L-13203, January 28, 1961; Liddell and Co., Inc. v. Collector of Int. Rev., L-9687, June 30, 1961.

penalty, but rather the justifiability of its imposition in the first place. And where the respondent apparently had himself originally adopted an incorrect interpretation of his own circulars, it would not be just to penalize appellant for falling into the same error.

(2) *When taxpayer's branch office collects husbanding and agency fees for services rendered to others, it is subject to the payment of 6% percentage tax on commercial brokers under section 195 in relation to section 194(t) of the Tax Code.*

In the case of *Kuenzle & Streiff, Inc. v. Commissioner of Internal Revenue*,[25] the Court held that where the taxpayer's branch office performs the duty of notifying port and customs authorities regarding the arrival and departure of various ships for and in behalf of the Manila agents of the shipping lines; services ships on docks and provisions them for departure not for itself, but, for the shipping agents; cashed checks and made payments for certain firms; advanced petty or incidental expenses in their behalf, thereafter claiming refund on them; received and attended to the procurement of spare parts and other needed supplies; prepared and answered correspondences, recorded invoices, statement of sales tax and other papers; represented the said firms in the various agencies of the government to which they were needed and called and rendered such services not in its name but in behalf of its clients; and collect husbanding and agency fees for such services, such fees are subject to the payment of the commercial broker's tax of 6% for the gross compensation received by it.

(a) *Commercial broker defined*

Section 194(t) of the Tax Code defines a commercial broker in the following manner:

> "(t) 'Commercial broker' includes all persons, other than importers, manufacturers, producers, or bona fide employees, who, for compensation or profit, sell or bring about sales or purchases of merchandise for other person, or bring proposed buyers and sellers together, or negotiate freights or *other business for owners of vessels,* or other means of transportation, or for the shippers, or consignors or consignees of freight carried by vessels or other means of transportation. The term includes commission merchants" (Emphasis supplied).

The petitioner falls within the above definition. Under the said section, as well as by the ruling handed down in at least two cases by the Court, the essential feature of a broker is the fact that he acts

[25] G.R. No. L-17648, October 31, 1964.

not for himself, but for a third person.[26] In the *Behn Meyer case*,[27] the Court stated:

> "x x x a broker is generally defined as one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between parties, never acts in his own name, but in the name of those employing him; x x x".

(b) *Distinguished from employee and agent*

Neither can the petitioner be considered a mere employee or agent of its client firms. An employee is one "who works *exclusively* for one person or firm and who has no office or place of business of his own and whose activities are under the exclusive direction and control of the person or firm employing him." [28] The petitioner cannot be considered as an agent either, since agency presumes exclusiveness which does not obtain in the relationship between the petitioner and all its clients. The chief feature which distinguishes a broker from other classes of agents is that he is the *intermediary or middleman*, and, in effecting a sale or exchange of property, acts in a certain sense as the agent of *both parties* to the transaction. Another distinction is that the idea of *exclusiveness* enters into an employment of agency, while in respect of a broker there is a holding out of one's self generally for employment in matters of trade, commerce and navigation and on this principle, a broker is distinguished from a clerk.[29]

It is patently self-serving to deny that the services for which petitioner received the "husbanding fees" do not come within the scope of Section 194(t) of the Tax Code. Petitioner's own brief recites that its husbanding services "consist, in general of provisioning and servicing of vessel, securing docking space in the wharf, alerting stevedoring companies of ship arrivals, providing medical services to crew members, advancing funds for the payment of all expenses incurred by the vessel while in port, and securing port clearances and other documents." The Court opined that: "We do not see how said services can be removed from the purview of Section 194(t) which classifies as broker those 'who, for compensation or profit . . . negotiates freights or *other business of owners of* vessels.' Surely, the phrase '*or other business of owners* of vessels' is broad enough to comprehend the above transaction."

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[26] Kerr & Co., Ltd., v. Collector of Int. Rev., 70 Phil. 36; Behn Meyer & Co., Ltd. v. Nolting and Garcia, 35 Phil. 724.

[27] *Ibid.*

[28] BIR Ruling, Sept. 12, 1939, Bull. 4th Atr. 1940; see Formilleza, Commentaries on the National Internal Revenue Code, 746; cited in the case of Kuenzle & Streiff v. Coll. of Int. Rev., See Note 25.

[29] 12 C. J. S., pp. 8-9.

It is also suggested that the agency fees in question should not be considered as broker's compensation because it is a fixed and regular one. The suggestion contradicts settled jurisprudence on the matter. Compensation is a return which is given for something else, in other words, a consideration. In its ordinary acceptation, the term applies not only to salaries, but to compensation by fees for specific services.[30]

B. SPECIFIC TAXES

(1) *Rubbing alcohol of which ethyl alcohol is its chief ingredient comes within the term "medicinal preparations," hence subject to specific tax under Section 127 in relation to Section 133 of the Tax Code.*

The Supreme Court in the case of *La Tondeña, Inc. v. Collector of Internal Revenue, et al.*,[31] reiterating a previous ruling [32] held that rubbing alcohol of which ethyl alcohol is its chief ingredient comes within the meaning of the term medicinal preparations and is subject to specific taxes under Sec. 127 in relation to Sec. 133 of the Tax Code. And ethyl alcohol is distilled spirits under Section 133 of the Tax Code.

C. DOCUMENTARY STAMP TAX

(1) *Basis of Documentary Stamp Tax upon original issuance of stock of no par value*

In the case of the original issue of a stock without par value, the documentary stamp tax shall be based upon the actual consideration received by the corporation at the time of the original issuance and does not include amounts which may have been paid after the stocks have been issued under Section 212 in relation to Section 210 of the Tax Code.[32a]

(2) *Nature of documentary stamp tax*

A documentary stamp tax is in the nature of an excise tax. It is not imposed upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the *facilities used* in the transaction of the business, separate

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[30] 8 Words and Phrases, pp. 300-302.

[31] G.R. No. L-14336, April 30, 1964.

[32] Commissioner of Internal Revenue v. Central Azucarera Don Pedro, G.R. No. L-14015, May 31, 1960.

[32-a] Commissioner of Internal Revenue V. Heald Lumber Company, G.R. No. L-16340, February 29, 1964.

[33] Du Pont v. U.S. 150; Thomas v. U.S., 192 U.S. 363; Nicol v. Ames, 174 U.S. 509, cited in the case of Commissioner of Internal Revenue v. Heald Lumber Company, see note 32a.

and apart from the business itself.[33] With respect to stock certificates, it is levied upon the privilege of issuing them; not on the money or property received by the issuing company for such certificates. Neither is it imposed upon the share of stock. As Justice Learned Hand pointed out in one case, a documentary stamp tax is levied on the *document* and not on the property which it describes.[34] If the tax in question is imposed on the privilege of issuing the certificates, then the tax may be collected only once, when the certificates are first or originally issued. The reason is that a certificate is issued only once. Whatever documentary stamp tax due, is due at that time.[35]

(3) *A mere transfer of surplus to capital and an increase in value of no par value shares of stock does not constitute issuance of shares of stock.*

A mere transfer of surplus to capital and an increase in the stated value of the outstanding no par value shares of the taxpayer does not constitute an issuance of share within the meaning of the law and that consequently no stamp tax is due.[36]

(4) *Consideration is synonymous with value*

Consideration as used in the Philippine Tax Code is synonymous with value used in the Federal Tax Code. If any difference exists at all between value and consideration, it is that value tends to grow in scope while consideration is strictly limited to immediate party transactions.[37] That being so, there would seem to be more reason to uphold the American ruling in the interpretation of the provision of Section 212 of our Tax Code than of its American counterpart.

C. FIXED AND PERCENTAGE TAXES

(1) *Warehouseman is subject to fixed and perrentage taxes under Sections 182(A)(1) and 191 of the Tax Code.*

Section 182(A)(1) provides that "Unless otherwise provided, every person engaging in a business on which the percentage tax is imposed shall pay a fixed annual tax of twenty pesos. And Section 191 provides that "Percentage tax on Road . . . and Others . . . warehousemen shall pay a tax equivalent to three per centum of their gross receipts."

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[34] Empire Trust Co. v. Hoey, 103 F. 2d. 430.
[35] *Ibid.*
[36] U.S. v. Archer-Daniels-Midland Co., F. 2d. 132, cited in the case of Commissioner v. Heald Lumber Co., see note 32a.
[37] See Note 32-a

The issue in the case of *Commissioner of Internal Revenue v. Hawaiian-Philippine Company* [38] is whether the respondent Hawaiian-Philippine Company is a warehouseman, and therefore liable for the payment of the fixed and percentage taxes provided in Sections 182(A)(1) and 191 of the Tax Code. Respondent operates a sugar central. After milling the sugar canes of its planters, it stores the sugar in its warehouse and issues quedans. For the first ninety days, it does not charge storage fees. But after that, it charges storage fees of ₱.30 per picul a month. The Court held that it was a warehouseman and therefore liable to the payment of the said taxes. The Court defined a warehouseman "as one who receives and stores goods of another for compensation." [39] For one to be considered engaged in the warehousing business, it is sufficient that he receives goods owned by another for storage and collects fees in connection with the same. In fact, Section 2 of the General Bonded Warehouse Act, as amended, defines a warehouseman as "a person engaged in the business of receiving commodity for storage."

(2) *Where warehousing business is carried in addition to, or in relation to the operation of a sugar central, this is not sufficient to exempt it from the payment of taxes on the separate businesses.*

Neither is the fact that respondent's warehousing business is carried in addition to, or in relation with the operation of its sugar central sufficient to exempt it from the payment of the tax prescribed in the legal provisions quoted above. Under Section 178 of the Tax Code, the tax on businesses payable for every separate or distinct establishment or place where business subject to the tax is conducted; and one line of business or occupation does not become exempt by being conducted with some other business or occupation for which such tax has been paid.[40]

(3) *Double taxation not prohibited in this jurisdiction*

Respondent's contention that the imposition of the tax under consideration would amount to double taxation is also without merit. As it is clear from the facts, respondent's warehousing business although carried on in relation to the operation of its sugar central is a distinct and separate business taxable under a different provision of the Tax Code. There can be no double taxation where the State merely imposes a tax on every separate and distinct business in

[38] G.R. No. L-16315, May 30, 1964.
[39] 44 Words and Phrases, p. 635, cited in the case of Commissioner of Internal Revenue v. Hawaiian-Philippine Co., see Note 38.
[40] See Note 38.

which a party is engaged. There is no prohibition against double or multiple taxation in this jurisdiction.[41]

VI. INCOME TAXES

A. DEDUCTIONS

(1) *Removal of a building*

If the removal of a building is not voluntary, but forced upon by the City Engineer because the building is a fire hazard, its loss should be charged off as a deduction from the gross income, provided that the loss has not been compensated by insurance or otherwise.[42]

(2) *Depreciation; basis*

Section 30(f) of the Revenue Code provides that a taxpayer may deduct from the gross income a reasonable allowance for deterioration of property arising out of its use or employment in the business or trade or out of its not being used. The total amount which may be claimed as a depreciation deduction shall in no case exceed the capital invested, nor based on an assessment in excess of the capital invested, nor on the estimated increased cost of replacement equipment. This is not authorized by law.[43]

In the case of *Commissioner of Internal Revenue v. Priscilla Estate, Inc.*,[44] petitioner particularly contested the basis for depreciation of Priscilla Building No. 3. This building with an assessed value of ₱70,343 but with a construction cost of ₱110,600, was acquired by the respondent corporation from the spouses Carlos Moran Sison in exchange for shares of stock. According to the petitioner, the basis for computing the depreciation of this building should be limited to the capital invested, which is the assessed value. On the other hand, the respondent based its computation on its construction cost, revaluing the property on this basis by a board resolution in order to "give justice to the Sison spouses." Since the revaluation would import an obligation of the corporation to pay the assessed value and the revalued construction cost, as provided in

[41] See Note 38, citing the cases of Manufacturers Ins. Co. v. Meer, L-2910, June 29, 1951 and City of Manila v. Inter-island Gas Service, L-879, August 31, 1956.

[42] Commissioner of Internal Revenue v. Priscilla Estate, Inc., et al., G.R. No. L-18282, May 29, 1964.

[43] Basilan Estates, Inc. v. Commissioner of Internal Revenue, Court of Tax Appeals Case, November 19, 1963; see also Quiazon, Law on Taxation (1965 Ed.), p. 108.

[44] See Note 42.

[45] Cleveland Brewing Co., 1 BTA 87; Walnut Creek Milling Co., 3 BTA 558; Norman B. Richardson, BTA 825; Brampton Walk Co., 18 BTA 1075 reversed and remained 45 F. 2d 327.

the resolution, the corporate investment would ultimately be the construction cost, and depreciation logically had to be on that basis.

The Court held that depreciation is a question of fact,[45] and is not "measured by a theoretical yardstick, but should be determined by a consideration of the actual facts . . ." [46] The petitioner himself on page 26 of his appeal brief, asserts that "what consists of the depreciable amount (sic) is elusive and is a question of fact." Since the petitioner does not claim that the tax court, in applying certain rate and basis to arrive at the allowed amounts of depreciation, and since the Supreme Court before the Revised Rules of Court, limited its review of decisions of the Court of Tax Appeal to question of law only,[47] the findings of the Tax Court on the depreciation of the several assets should not be disturbed.

(3) *Credits on foreign taxes*

The right to deduct income taxes paid to a foreign government from the taxpayer's gross income is given only as an alternative or substitute to his right to claim a tax credit for such foreign income taxes.

In the case of *Commissioner of Internal Revenue v. Lednicky, et al.*,[48] respondents are husband and wife, both American citizens residing in the Philippines and have derived all their income from Philippine sources. In the years 1955-57, the respondents paid their income taxes in the Philippines but claimed for a refund of the Federal income taxes which they paid to the U.S. Government as deduction from their gross income.

Issue: Whether a citizen of the United States residing in the Philippines, who derives income wholly from sources within the Republic of the Philippines, may deduct from his gross income for the taxable year on the strength of Section 30 (c-1) of the Philippine Internal Revenue Code. The law is quoted as follows:

"Section 30. Deductions from gross income.—

x x x

(c) Taxes;

(1) In general.—Taxes paid or accrued within the taxable year, except—

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[46] Landen v. Commissioner of Internal Revenue of State of Kansas, 269 Fed. 433 (1920), quoted in Sec. 23.32, Mertens, Federal Income Taxation, cited in the case of Commissioner v. Priscilla Estate, Inc., see Note 42.

[47] Sanchez v. Commissioner of Customs, L-8556, Sept. 30, 1957; Gutierrez v. Court of Tax Appeals, L-9738-9771, May 31, 1957 cited in the case of Commissioner v. Priscilla Estate, Inc. see Note 42.

[48] G.R. Nos. L-18169, 18262, and 21434, July 31, 1964.

(B) Income, war-profits, and excess profits taxes imposed by authority of any foreign country; but this deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to have to any extent the benefits of paragraph (3) of this subsection (relating to credit for foreign countries)

Par. (c)(3) provides credits against tax for taxes of foreign countries. If the taxpayer signifies in his return his desire to have the benefits of this paragraph, the tax imposed by this Title shall be credited with—

(B) Alien resident of the Philippines.—In the case of an alien resident of the Philippines, the amount of any such taxes paid or accrued during the taxable year to any foreign country, if the foreign country of which such alien resident is a citizen or subject, in imposing such taxes, allows a similar credit to citizens of the Philippines residing in such country; [49]

Held: "We agree with appellant Commissioner that the construction of Section 30(c)(1)(B) of the Internal Revenue Act shows the law's intent that the right to deduct income taxes paid to foreign government from the taxpayer's gross income is given only as an *alternative* or *substitute* to his *right to claim such tax credit* for foreign income taxes under Section 30(c)(3) and (4); so that *unless* the alien resident has a *right to claim such tax credit* if he so chooses, he is precluded from deducting the foreign income taxes from his gross income. For it is obvious that in prescribing that such deduction shall be allowed in the case of a taxpayer who does not signify in his return his desire to claim a tax credit and waive the deductions; otherwise the foreign taxes would always be deductible, and their mention in the list of non-deductible items in section 30(c) as well have been omitted, or at least expressly limited to taxes on income from sources outside the Philippine Islands." In the instant case, the respondents do not have the right to claim a tax credit for foreign taxes paid, hence, they do not have the right to claim as an alternative deduction such foreign taxes paid by them.

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[49] The amount of tax credit so authorized above is limited by the following provisions of the Tax Code:

"Par. (C)(4) *Limitation on credit.* The amount of credit taken under this section shall be subject to each of the following terms:

(A) The amount of the credit in respect to the tax paid or accrued to any country shall not exceed the same proportion of the tax against which such credit is taken, which the taxpayer's net income from sources within the country taxable under this Title bears to his entire net income for the same taxable year; and

(B) The total amount of the credit shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's net income from sources without the Philippines taxable under this Title bears to his entire net income of the same taxable year."

(a) *Double taxation, when not obnoxious*

Much stress is laid on the thesis that if the respondent taxpayers are not allowed to deduct the income taxes they are required to pay the government of the United States in their return for Philippine income tax, they would be subjected to double taxation. What respondents fail to observe is that double taxation becomes obnoxious only where the taxpayer pays taxes twice for the benefit of the same governmental entity.[50] In the present case, while the taxpayer would have to pay two taxes on the same income, the Philippine government only received the proceeds of one tax. As between the Philippines, where the income was earned and where the taxpayer is domiciled, and the United States where the income was not earned and where the taxpayer did not, it is indisputable that justice and equity demand that the taxes on the income should accrue to the benefit of the Philippines. Any relief from the alleged double taxation should come from the United States, and not from the Philippines, since the former's right to burden the taxpayer is solely predicated on his citizenship, without contributing to the production of the wealth that is being taxed.[51]

(b) *Basis of the right of the Government to tax income*

The right of the government to tax income emanates from its partnership in the production of income by providing the protection, resources, incentive, and proper climate for such production, the interpretation given by the respondents to the revenue law provision in question operates, in its application, to place a resident alien with only domestic sources of income in an equal, if not in a better position than one who had both domestic and foreign sources of income a situation which is manifestly unfair.[52]

(c) *Foreign government cannot reduce the tax due and owing to the Philippine government; incompatible with the status of an independent and sovereign state.*

To allow the alien resident to deduct from his gross income whatever taxes he pays to his own government amounts to the conferring on the latter the power to reduce the tax income of the Philippine government simply by increasing the tax rates on the alien resident. Every time the rate of taxation imposed upon an alien resident is increased by his own government, his deduction from Philippine taxes would correspondingly increase, and the proceeds

[50] Cf. Manila v. Inter-island Gas Service, 52 O.G. 6579; Manufacturers Life Ins. Co. v. Meer, 89 Phil. 357.

[51] See Note 48.

[52] *Ibid.*

for the Philippines would diminish, thereby subordinating our own to those levied by a foreign government. Such a result would be incompatible with the status of the Philippines as an independent and sovereign state.[53]

VII. EXEMPTIONS

An express exemption from taxation, either wholly or in part may be created either by a provision in the constitution, a statute, an ordinance, a provision in the charter of a corporation, or by a contract other than a charter provision.[54] The power to exempt from taxation, as well as the power to tax, is an essential attribute of sovereignty, and may be exercised in the constitution, or in statute, unless the constitution expressly or by implication prohibits action by the legislature on the subject.[55]

A. *Under Act No. 484, steel towers come within the term "poles" and therefore exempt from taxation.*

Paragraph 9, Part 11 of Act No. 484 of respondent Meralco's franchise provides that:

> "The grantee shall be liable to the same taxes upon its real estate, buildings, plant (not including poles, wires, transformers, and insulators), machinery and personal property as other persons are or may be hereunder be required by law to pay. x x x Said percentage shall be due and payable at the times stated in paragraph 19 of Part one hereof, x x x and shall be in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon the privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee from which taxes and assessments the grantee is hereby expressly exempted."

The Court held in the case of *Board of Assessment Appeals, et al. v. Meralco*,[56] that steel towers from which the electric transmission wires carrying high voltage current are attached come with the term "poles" which are declared exempt from taxes under respondent's franchise.

The poles as contemplated in respondent's franchise should be understood and taken as a part of the electric power system of the respondent. If the latter were required to employ wooden poles or rounded poles as it used to do fifty years back, then one should admit that the Philippines is one century behind the age of space. It should be conceded by now that steel towers, like the ones in question, can better effectuate the purposes for which the respondent's franchise was granted.

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[53] *Ibid.*
[54] 2 Cooley, Taxation (4th ed.), pp. 1367-1368.
[55] 61 C.J., p. 384.
[56] G.R. No. L-15334, January 31, 1964.

(1) *Steel towers are not real property, hence not subject to real property tax.*

Granting for the purpose of argument that the steel towers are embraced within the term "poles," the next question is whether they are considered real property and therefore can be subject to real property tax. The tax law does not provide a definition of real property but Article 415 of the Civil Code does, by stating what are immovable property. The steel towers are not construction analogous to buildings nor adhering to the soil. As per description, given by the lower court, they are removable and merely attached to a square metal frame by means of bolts, which when unscrewed could easily be dismantled and moved from place to place. They can not be included under paragraph 3 of the said article, as they are not attached to an immovable in a fixed manner, and they can be separated without breaking the material or causing deterioration upon the object to which they are attached. Each of these metal strips, joined together by means of bolts, which can be disassembled by unscrewing the bolts and reassembled by screwing the same. These are not machineries, receptacles, instruments or implements, and even if they were, they are not intended for industry or work on the land in which the steel supports or towers are constructed.[57]

B. *Under Sec. 2 of Republic Act No. 601, skid tanks are exempted from payment of taxes on foreign exchanges used in their importation.*

> "Section 2 of Republic Act No. 601 provides that "The tax provided for in section 1 of this Act shall not be collected on foreign exchange used for payment of the costs, transportation, and or other charges incident to importation into the Philippines of x x x machinery, equipment, accessories, and spare parts for the use of industries."

In the case of *Philippine Acetylene Company v. Central Bank of the Philippines*,[58] the plaintiff is engaged in the industry of a manufacturer (and seller) of acetylene gas, oxygen, and other gases. However, it does not manufacture liquefied petroleum gas. It buys liquefied petroleum gas in bulk from the Caltex Refinery in Batangas and retails it to individual consumers. It imported certain skid tanks for transporting and storing such liquefied petroleum gas. The Central Bank collected taxes on the foreign exchanges which plaintiff applied to the payment of costs, transportation and other charges incident to the importation of the skid tanks. The Court held that the skid tanks come within the exemption provided for in Section 2 of Rep. Act No. 601 which provides that tax should not be assessed

[57] *Ibid.*
[58] G.R. No. L-17097, September 29, 1964.

or collected on machineries, equipment, accessories and spare parts for the use of industries. It can not be denied that plaintiff was engaged in an industry, the manufacture and sale of gases. If in its operation, it found profit or convenience in merely buying instead of manufacturing liquefied petroleum gas, and then selling it by means of special containers, it did not thereby lose its character as a corporation engaged in an industry.

(1) *Action for refund of taxes paid on foreign exchanges under Republic Act No. 601 should be directed against the Central Bank.*

The argument that the action to recover the tax should not be directed against the Cenral Bank but against the Treasurer of the Philippines has no merit because the Central Bank is a corporate entity with power to sue and be sued. Sec. 4 of Rep. Act No. 265 and Sec. 5 of Republic Act No. 601 direct that refund of taxes be made by the Central Bank.[59]

C. *Exemption under Section 27(e) of the Tax Code*

Where the educational institution is an *alter ego* or business conduit of a single stockholder or controlling group in order to avoid payment of income tax, it is not exempt from the payment of income tax under Section 27(e) of the Tax Code.[60] Considering that the net income of the University of Visayas was invested in permanent assets placed in the name of the president, his wife or both, it is very obvious that such net income realized by the university inured to the benefit of the president and his family, they owning 85% of the stocks of the University of Visayas. So that the latter is not exempt from the payment of income tax.

D. *Exemptions under Republic Act No. 901*

Under Republic Act No. 901, absent any of the requisites, the taxpayer is not entitled to exemption under such Act.

Section 1 of Republic Act No. 901 provides that "Any person, partnership, company or corporation who or which subsequent to the approval of this Act, shall engage in a new and necessary industry shall be entitled to exemption until December 31, 1958 from the payment of all taxes directly payable by such person, partnership, company or corporation in respect to said industry." In order that a tax may be included in the exemption, it must be shown: (1) that the tax is an internal revenue tax; (2) that it is payable by a person,

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[59] *Ibid.*

[60] Commissioner of Internal Revenue v. University of Visayas, G.R. No. L-13554, October 30, 1964.

partnership, company or corporation engaged in a new and necessary industry; and (3) that it is directly payable in respect to said industry.

Thus, in the case of *Plywood Industries, Inc. v. Collector of Internal Revenue*,[61] the Court held that the third requisite is wanting in the case of the petitioner. The forest charges paid by it were not paid in respect of the new and necessary industry in which it was engaged, namely the manufacture of plywood panels and veneer sheets, but for the privilege granted to it by the government to exploit natural resources in the public domain. They were paid by petitioner for the operation of its timber concessions, which were not essential to the maintenance of its plywood factory. It is one thing to say that logs are necessary for the manufacture of plywood and veneer sheets and another thing to claim the same necessity for the operation of a concession from which such logs may be taken. Proof of this, is the fact that petitioner established and was operating its plywood factory even before it acquired its timber concessions, as well as the fact that many concessions exist independently of the needs of the industry of plywood manufacture.

The very same issue has already been settled in a case decided in 1960,[62] where the Court held:

> "We cannot be charged with having split respondent's business into two when we state that it is engaged in the separate and distinct business of forest concession and manufacture of plywood and veneer. Logs and lumber certainly are necessary to the manufacture of plywood but the operation of a forest concession, for the purpose of obtaining the required lumber, is certainly not indispensable for the manufacture of plywood and veneer. The manufacturer of said plywood can have his supply of lumber by purchasing the same from other forest concessionaires (who of course are liable for forest charges). It would be more profitable for the manufacturer were it to operate its own lumber mills and to have its own foreest concession. So the forest charges in question are not included in the tax exemption granted to petitioner."

VIII. POWERS AND DUTIES OF THE COMMISSIONER OF INTERNAL REVENUE, COMMISSIONER OF CUSTOMS, AND ETC.

A. *Commissioner of Internal Revenue cannot delegate the power to make final assessment.*

In the case of *City Lumber, Inc. v. Domingo, et al.*,[63] the petitioner assigned as error the alleged violation of an order of the

[61] G.R. No. L-16466, March 31, 1964.
[62] Collector of Internal Revenue v. Lacson, G.R. No. L-12945, April 29, 1960.
[63] G.R. No. L-18611, January 30, 1964.

Commissioner granting Regional Directors authority to close tax cases involving deficiency assessments not exceeding ₱10,000 in taxes and penalties. It appears that after reinvestigation by the corresponding regional director, the latter reviewed the case and reduced the assessment from ₱5,028 to ₱176. The Court held that the order in question (Memorandum Order No. V-634 dated July 3, 1956) was applicable only to subordinate officers of the Bureau of Internal Revenue and could not bind the Commissioner himself, who has been entrusted by law to make final assessments. The Commissioner can not delegate this power to make final assessments to his subordinate. *Delegatus non potest delegare;* the person to whom an office or duty is delegated cannot lawfully devolve the duty on another.

B. *Commissioner of Customs has the power to order the forfeiture of merchandise, the importation of which is contrary to law under Section 1363 of the Revised Administrative Code in relation to Central Bank Circular No. 44 and 45 promulgated under Section 74 of Republic Act No. 265.*

In the case of *Serree Investment Company v. Commissioner of Customs*,[64] the Court held valid the seizure by the Commissioner of Customs of certain merchandise consigned to the petitioner for they are without any Central Bank Release Certificate submitted in violation of Central Bank Circulars Nos. 44 and 45 in relation to Section 1363 of the Revised Administrative Code.

C. *Collector of Customs has jurisdiction in seizure and forfeiture proceedings of articles of prohibited importation or their importation is contrary to law, in accordance with Sections 2205 and 2530 of the Tariff and Customs Code; ordinary court do not have jurisdiction to pass upon the validity of the actuation of the Collector of Customs in such cases.*

In the case of *Collector of Customs for the Port of Manila v. Arca, et al.*,[65] the issue involved is, who has a better right to the tobacco in question, petitioner, Collector of Customs who has ordered the seizure and declared their forfeiture or respondent Cloma in whose favor a writ of attachment was issued by the Court of First Instance of Manila. There is no question that the importation of the tobacco leaves in question was illegal, having been made in clear violation of the policy contained in Republic Acts Nos. 698 and 1195. To this effect is the decision of the Court in Climaco v. Barcelona, *et al.*,[66] in accordance with section 2530 of the Tariff and Customs

[64] G.R. No. L-19564, November 28, 1964.
[65] G.R. No. L-21389, July 17, 1964.
[66] G.R. No. L-19597, July 31, 1962.

Code (formerly 1363[f] of the Revised Administrative Code), which reads:

> "x x x Any vessel or aircraft, cargo, articles and other objects shall under the following condition, be subject to forfeiture:
>
> (f) Any article of prohibited importation or exportation, the importation or exportation of which is effected or attempted contrary to law, x x x." And the Collector of Customs has the power to order the seizure in accordance with the provision of section 2205 of the Tariff and Customs Code, thus:
>
> "x x x It shall be within the power of customs official or person authorized as aforesaid, and it shall be his duty to make seizure of any vessel, x x x cargo, articles x x x when the same is subject to forfeiture or liable for any fine imposed under the customs and tariff law x x x such power to be exercised in conformity with the law and the provisions of this Code."

The Court has had occasion in the past to uphold the action of the Collector of Customs in ordering the seizure of goods or articles imported or exported in violation of existing laws and regulations, and their forfeiture in favor of the government.[67] The seizure proceedings are taken by the Collector of Customs in the exercise of its jurisdiction under the Customs law.[68] As early as 1913, the exercise by the Collector of Customs of such jurisdiction has already been recognized, thus:

> "The Insular Collector of Customs (now Collector of Customs) when sitting in forfeiture proceedings as provided by Act No. 355 (now Republic Act No. 1937), constitutes a tribunal upon which the law expressly confers jurisdiction to hear and determine all questions touching forfeiture and further disposition of the subject matter of such proceeding." [69]

In a more recent case,[70] the Supreme Court ruling on the jurisdiction of the Collector of Customs to seize and forfeit the goods involved therein, said:

> "In accordance with Section 1250 of the Revised Administrative Code, the Collector of Customs has jurisdiction, indeed has the duty to exercise jurisdiction to prevent importation or otherwise secure compliance with the legal requirements in the case of merchandise of prohibited importation by law. In the exercise of this jurisdiction, he may subject to forfeitures cargoes and other objects of prohibited importation, in accordance with section 1363(f) of the Revised Administrative Code."

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[67] Tong Tek, et al. v. Commissioner of Customs, G.R. No. L-11947, June 30, 1959; Pascual v. Commissioner of Customs, L-10979, June 30, 1959; Com. of Customs v. Pascual, L-9836, November 18, 1959; Commissioner of Customs v. Serree Investment Co., May 16, 1960.

[68] See Sections 2205 and 2530 of the Tariff and Customs Code.

[69] Government of the Philippines v. Gale, 24 Phil. 95.

[70] Po Eng v. Commissioner of Customs, L-10508, November 29, 1960.

D. Customs officers can no longer demand new customs entries for same merchandise imported when Court has already recognized the customs entries covering such merchandise as valid, inasmuch as to require new customs entries would evade or sabotage the effect of the decision recognizing the validity of customs entries previously filed. To require such filing of new customs entries is a superfluous technicality that would serve no useful purpose.[70a]

IX. PIERCING THE VEIL OF CORPORATE PERSONALITY FOR TAX PURPOSES

A. Where a corporation is but a business conduit or *alter ego* of another, the fiction of corporate personality, separate and distinct from each other, should be disregarded, and consequently the tax should be imposed upon the controlling corporation. Thus, in the case of *Commissioner of Internal Revenue v. Norton and Harrison Co.*,[71] Jackbilt and Norton and Harrison, Co. were considered as one corporation and that the sale by Norton and Harrison, Co. of concrete blocks to the public was considered as the *original sale* for the purpose of imposing the 7% percentage tax on every original sale of goods, wares, merchandise under Section 186 of the Tax Code and not the transaction between Jackbilt and Norton and Harrison, Co. for the latter controlled the former and was but a business conduit or *alter ego* of Norton and Harrison Company.

B. Where an educational institution is owned or controlled by a single stockholder or controlling group as in the case of the University of Visayas, where 85% of the shares of stock is owned by a family, and the net income inures to the benefit of the family inasmuch as the net income is used in the purchase of permanent assets in the name of the president or his wife or both, the corporate personality of the educational institution should be disregarded and should not be exempt from the payment of income tax under Sec. 27(e) of the Tax Code.[72]

X. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION OF TAXES; EXCEPTIONS

A. Section 331 of the Tax Code provides that "Except as provided in the succeeding section, internal revenue taxes shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of taxes shall be begun after the expiration of such period. For the purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be con-

[70a] Lingad, et al. v. Macadaeg, et al., G.R. No. L-20184, July 30, 1964.
[71] G.R. No. L-17618, August 31, 1964.
[72] See Note 60.

sidered as filed on such last day: *Provided,* That this limitation shall not apply to cases already investigated prior to the approval of this Code."

(1) In the case of *Republic v. Alano,*[73] the Court held that the taxpayer is presumed to have filed his income tax returns not later than March 31 of each year, as required by law and there is no proof to the contrary, the five-year period fixed by the above-quoted provision must be counted from March 31, 1951 and expired on March 31, 1956. Therefore, the final revised assessment of November 11, 1957 (which superseded and annulled the original assessment of January 13, 1956) is clearly beyond the statutory limiting period.

The argument that the revised assessment having been the result of Alano's petition for reconsideration, it should be deemed effective as of the date of the original assessment of January 13, 1956 is untenable. This Court has already ruled that a mere protest and petition for the reconsideration of the assessment, without a resulting reinvestigation and introduction of new evidence on the part of the taxpayer, does not stop the running of the prescriptive period.[74]

(2) *Distinguished from the case of Collector v. Suyoc Consolidated Mining Co.*[75]

The case differs from the Suyoc case in that here the taxpayer made no attempt to delay the assessment proceedings by repeated requests or other positive acts on his part; he only asked once for examination on the same record and evidence that the revenue authorities already had before them, a petition that could have been resolved without delay if the first assessment had been made according to the facts and the law.

(3) *Objective of the statutory period of limitation*

As explained in the *Ablaza case,*[76] the main objective of the statutory bar is to protect the taxpayer from harassment. This protection seems particularly called for in the case at bar. The reduction of the first grossly excessive assessment for ₱11,234 in deficiency income tax was voluntarily reduced to only 1/9 of that amount on the same facts and evidence, with the elimination of the original 50% surcharge, is proof positive that said assessment was recklessly

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[73] G.R. No. L-18865, September 28, 1964.
[74] Collector v. Pineda, L-14522, May 31, 1961; Collector v. Solano, L-11579, July 31, 1958; Republic v. Ablaza, L-14519, July 26, 1960.
[75] G.R. No. L-11527, November 25, 1958.
[76] See Note 74.

made without regard to the merits of the case, and only to intimidate the defendant into paying something beyond what was rightfully due.

> B. Section 332(a) of the tax code provides one of the exceptions to the period of limitation of assessment and collection of taxes. "In case of false or fraudulent return with intent to evade tax or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within ten years after the discovery of the falsity, fraud, or omission."

(1) *Fraud must be proven under Section 332(a) and failure to prove it, the period provided for in Section 331 applies.*

In the case of *Republic v. Lim de Yu*,[77] appellant maintains that appellee's returns for the years 1949 to 1953 are fraudulent because her yearly net incomes reported in her returns are much less than as computed by the Bureau, and consequently, under par. (a), section 332 of the Tax Code, it has ten years from the date of the discovery of the fraud or falsity, i.e., May 25, 1955, within which to assess the taxes or to file a suit for collection without assessment. The Court, however, said that it is another thing to say that the appellee committed a deliberate fraud in declaring smaller incomes for the years in which she filed her returns. Indeed, the Bureau appears not too sure as to the real amounts of her net incomes for those years. On three different occasions it arrived at three highly different computations. Attention may likewise be drawn to the fact that in a paragraph of the complaint, appellant seeks to collect from the appellee the sum of ₱28 plus a surcharge of 50% as unpaid tax for the year 1948 notwithstanding the fact admitted in the stipulation that appellee filed her return for that year and duly paid the said amount.

Fraud not having been proved, the period of limitation for assessment or collection was five years from the filing of the return, according to section 331 of the Tax Code. The right to assess and collect the income taxes for the years 1948 to 1950 had already prescribed when the Bureau of Internal Revenue issued the deficiency income tax assessment on July 17, 1956.

> C. Section 332(b) of the Tax Code provides that "Where before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Collector of Internal Revenue and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

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[77] G.R. No. L-17438, April 30, 1964.

(1) *Section 332(b) of the Tax Code does not authorize the extension of the period of assessment once prescription has already attached.*

In the case of *Republic v. Lim de Yu, supra,* the Court held that the tax years 1948 to 1950 cannot be deemed included in the "waiver of the statute of limitation under the National Internal Revenue Code" executed by appellee on August 30, 1956. The five-year period for assessment counted from the date the return is filed, may be extended upon agreement of the Commissioner and the taxpayer, but such agreement must be made before, *not after,* the expiration of the original period (section 332[b], Tax Code). The clear import of the provision is that it does not authorize extension once prescription has attached.

(2) The waiver of the statute of limitation validly covers only the tax years 1951 and 1952 with respect to which the five-year period has not yet lapsed when the said waiver was executed.[78]

(3) Waiver of statute of limitation is not necessary when the assessment is made within the five-year period. So that where the assessment of the income for 1953 was made on July 18, 1958, waiver was not necessary as the assessment was made within the five-year period. After the assessment of July 18, 1958, appellant has five years within which to file suit for collection pursuant to sec. 332(c) of the Tax Code. Appellee's theory of extension stated in the waiver, namely, December 31, 1958 is without merit.[79]

(4) *Assessment distinguished from collection*

An assessment is not an action or proceeding for the collection of taxes. It is merely a notice to the effect that the amount therein stated is due as tax and a demand for the payment thereof. It is a step preliminary, but essential to warrant distraint, if still feasible, and, also, to establish a cause for 'judicial action' as the phrase is used in section 316 of the Tax Code.[80]

(5) *Waiver refers only to assessment not to collection*

Although under the waiver, appellee consented to the assessment and collection if made not later than December 31, 1958, such expiration date must be deemed to refer only to the extension of the assessment period. Insofar as collection is concerned, the period does not apply for otherwise the effect of the waiver would be to shorten, not extend, the legal period for that purpose.[81]

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[78] *Ibid.*
[79] *Ibid.*
[80] Alhambra Cigar and Cigarette Manufacturing Company v. Collector of Internal Revenue, L-12026, May 29, 1959.
[81] See Note 77.

D. Section 332(c) of the Tax Code provides that "Where the assessment of any internal revenue tax has been made within the period of limitation above prescribed such tax may be collected by distraint or levy or by a proceeding in court, but only if begun (1) within five years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Collector of Internal Revenue and the taxpayer before the expiration of such five year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."

(1) *The act of requesting a reinvestigation alone does not suspend the period. The request should first be granted in order to effect suspension.*

In the case of *Republic v. Gancayco*,[82] the Court held that the right of the State to collect the taxes due from the appellee for the year 1946 has prescribed. Whether the computation of the time starts from June 13, 1946 or March 3, 1949, the filing of the collection case on July 19, 1960 is far beyond the period. While it is true that on March 31, 1949, the appellee Gancayco requested a thorough reinvestigation of the case, he, at the same time, placed at the disposal of the Collector evidence he has for such purpose. Apparently, the Collector ignored the request, for the records and documents were not at all examined. *The act of requesting a reinvestigation alone does not suspend the period. The request should first be granted, in order to effect suspension.*[83] The Collector gave appellee until April 1, 1949, within which to submit his evidence, which the latter did one day before. There were no impediments on the part of the Collector to file the collection from April 1, 1949. The very letter of the Collector to appellee on May 17, 1960 indicated that the latter had been asking for the cancellation of the assessment in question due to prescription, which only goes to show that in the interim, no action had been taken by the Collector on the request for re-examination of the documents appellee had placed under the Collector's disposal. And under Sec. 332(c) of the Tax Code, the five-year period had long lapsed when the case was instituted.

However, in the earlier case of *Commissioner of Internal Revenue v. Capitol Subdivision, Inc.*,[84] a request for review or reconsideration of assessment interrupted the running of the period of collection under Section 332(c) of the Tax Code. In that case the respondent taxpayer contended that the right of the Collector of Internal Revenue to collect deficiency income taxes for the years

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[82] G.R. No. L-18307, June 30, 1964.

[83] Coll. v. Sayoc Consolidated Mining Co. *supra;* Republic v. Ablaza, *supra*, cited in the case of Republic v. Gancayco, *supra*.

[84] G.R. No. L-18993, April 30, 1964.

1948-1951 had already prescribed. It contended that from April 8, 1953, when the Collector demanded payment of the deficiency income taxes for said years up to December 28, 1959, when the Collector's answer to the taxpayer's petition was filed in the Court of Tax Appeals, more than six years have already lapsed and therefore under Section 331 and 332(c) the Collector's right to collect had already prescribed.

However, the Court held that the right to enforce collection of the disputed assessment has not yet been lost. There is no question that the period commenced to run on April 8, 1953, when the assessment was made. The same was interrupted when the respondent taxpayer by letter of May 30, 1953, requested for an itemized information on the disallowed items. While it is true that the said letter did not specifically use the words "review" or "reconsideration" the request itself for an explanation of the disallowances made in the assessment in effect was an exception to the correctness thereof. The fact that the taxpayer actually assailed the correctness of such assessment "from the start" was specifically admitted in the letter of September 16, 1959. This request for reconsideration or review of the assessment was denied when the petitioner demanded payment of the alleged deficiency tax on June 21, 1955. The period for collection then started to run again, but it was tolled when the taxpayer on July 1, 1955 requested a reconsideration. This request was denied on September 20, 1955, and a span of 25 days elapsed until October 15, 1955 when the taxpayer explained the disallowed items and requested for a re-investigation of the same.

On September 2, 1959, petitioner denied the request for reinvestigation when it reiterated its demand for collection of the alleged deficiency tax. From this date until December 28, 1959, when the answer to the taxpayer's petition was filed in the Court of Tax Appeals, only 3 months and 26 days had passed. Although, the assessment was sent on April 8, 1953, but respondent taxpayer's own requests for review or reconsideration of the disputed assessment, the period for collection thereof had been interrupted. Therefore, deducting from the total period from April 8, 1953 (date of answer which is tantamount to a judicial action) or a total of 6 years, 8 months and 21 days, the period of interruption from May 30, 1953 (when respondent filed its petition for clarification amounting to reconsideration to review of the assessment) to June 21, 1955 (when petitioner in effect denied the petition reiterating its demand for payment), or a total of 2 years and 21 days, there is left a period of 4 years and 8 months within which judicial collection may be

effected. Since the law allows 5 years for this purpose, the collection sought by the petitioner is still timely.

There seems to be an apparent inconsistency in the two cases. In the *Gancayco case,* the Court held that a mere request for reinvestigation does not suspend the period for collection. The request should first be granted in order to effect suspension. While in the *Capitol Subdivision, Inc. case,* the court held that a request for review or reconsideration of assessment interrupted the running of the period of collection. The apparent inconsistency arises from the fact that notwithstanding the denial of the request for review or reconsideration of the assessment in the *Capitol Subdivision case,* the period of collection was interrupted, whereas if we follow the reasoning in the *Gancayco case,* such request for reconsideration should be first granted in order to toll the running of the period for collection.

The only possible way out of this seemingly inextricable inconsistency is to consider the actuation of the Collector of Internal Revenue in both cases. In the *Gancayco* case, the Collector ignored the request for reinvestigation notwithstanding the fact that the taxpayer has placed in his disposal evidence with which to reconsider his assessment. But the Collector did not act upon it. He has nothing to blame but himself for during such period nobody could interfere with him in the collection of the tax due. However in the case of the *Capitol Subdivision, Inc.,* the collector could have enforced the collection but for the repeated requests for reconsideration of the taxpayer. It is but proper that the time consumed in the reconsideration of his request that is the period between the request for reconsideration and the time of the denial of such request should be deducted in the computation of the prescriptive period for collection, for during such period the Collector is interfered in the filing of the collection. He may either grant the request or he may deny it. It is but just and proper that the interim period during which he is tied down with the request should be deducted from the period for collection. It is not like in the *Gancayco case* where the Collector did not act upon the request either to deny or grant it. He just sat down upon the request.

(2) *Extra-judicial demands upon the taxpayer do not toll the prescriptive period for collection.*

In the case of *Republic v. Gancayco, supra,* the Solicitor argues that even if the five-year period had lapsed, still the case at bar was properly instituted, because the extra-judicial demands upon the appellee tolled the prescriptive period, citing in support thereof, pro-

visions of the Civil Code and cases. The Court, however, held that "The only agreement that can suspend the running of the prescriptive period for the collection of taxes by court action is a written agreement between the taxpayer and the Collector of Internal Revenue entered into before the expiration of the five-year period of limitation prescribed by law." [85]

(3) *Cases when the taxpayer is barred from setting up the defense of prescription even if he has not previously waived it.*

In the case of *Republic v. Arcache, et al.*,[86] the Court, citing the case of Collector v. Suyoc Consolidated Mining Co.,[87] stated:

> "While we may argue with the Court of Tax Appeals that a mere request for re-examination or reinvestigation may not have the effect of suspending the running of the period of limitation for in such a case there is a need of a written agreement to extend the period between the Collector and the taxpayer, there are cases where a taxpayer may be prevented from setting up the defense of prescription even if he has not previously waived it in writing as when by his repeated requests or positive acts the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government. And when such situation comes such an attitude or behavior should not be countenanced if only to protect the interest of the Government."
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> "The tax could have been collected, but the government withheld action at the specific request of the plaintiff. The plaintiff is now estopped and should not be permitted to raise the defense of the Statute of Limitations." (Newport Co. v. U., (D.C-Wis.), 34 F. Supp., 588)".

(4) *When action is for forfeiture of bond in satisfaction of the tax obligation of the taxpayer, the action is for enforcement of a written contractual obligation, so prescriptive period is ten years.*

The case of *Republic v. Arcache, et al., supra* is an action filed for the forfeiture of the bond in satisfaction of the tax obligation of taxpayer Arcache. The action is for the enforcement of a written obligation, for which the prescriptive period is ten years. It is already settled in this connection that the giving of a bond as a condition of an extension of time for the payment of income tax, even after the collection of tax as such is barred by the statute of limitation, does not preclude the recovery on the bond.

(5) The filing of a bond as a condition for an extension of time for the payment of the income tax. even after the collection of tax

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[85] Collector of Internal Revenue v. Solano, *supra*, See also par. (b), Sec. 332 of the Tax Code.

[86] G.R. No. L-15547, February 29, 1964.

[87] See Note 75.

is barred by the statute of limitation, amounts to a renewal (*renovacion*) of the obligation or a waiver of the benefit granted by law to the taxpayer who is estopped from raising the question of prescription after having waived such defense by the filing of the bond.[88] The Court reiterated the ruling in the case of Sambrano v. Court of Tax Appeals, et al.,[89] which states:

> "By virtue of this instrument, petitioner in fact acknowledged the existence of the tax liabilities x x x, and assumed the obligation to settle the same. Although the percentage tax for the years 1939-41 and 1945 may have been extinguished by prescription account of the mandate of sections 333 and 332, yet in the case at bar, petitioner obligated to pay the percentage taxes of the years 1939-41 and 1945 assessed on January 6, 1951 and reassessed on April 28, 1951, as well as other deficiencies was acknowledged by means of the chattel mortgage of May 3, 1951, an act which amounts to a *renewal* (renovacion) of the obligation or waiver of the benefit granted by law to the petitioner after having waived such defense by the execution of said mortgage."

(6) *Prescription is a matter of defense which must be pleaded in a motion to dismiss or in the answer, and failure to do so, is a waiver of it.*

In the case of *Commissioner of Internal Revenue v. Priscilla Estate, Inc., supra*, petitioner argues that the refund to the respondent is barred by the two-year prescriptive period under Section 306 of the Internal Revenue Code because the action for refund was filed on December 5, 1956 while respondent's 1950 income tax was paid on August 15, 1951. The petitioner's argument would have been tenable but for his failure to plead prescription in a motion to dismiss or a defense in his answer. Said failure is deemed a waiver of the defense of prescription.

XI. WHERE THE COLLECTION OF SPECIAL EXCISE TAX ON FOREIGN EXCHANGE IS ILLEGAL BY REASON OF MISTAKE IN THE INTERPRETATION OF REPUBLIC ACT NO. 601, THE PERIOD FOR FILING AN ACTION FOR REFUND IS GOVERNED BY ARTICLE 1145(2) OF THE NEW CIVIL CODE AS THE TAX CODE IS SILENT ON THE PRESCRIPTIVE PERIOD FOR FILING SUCH CLAIM FOR REFUND.

In the case of *Olizon v. Central Bank of the Philippines*,[90] the Court held that where the collection of Special Excise Tax on

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[88] See Note 86.
[89] L-8652, March 30, 1957.
[90] G.R. No. L-16524, June 30, 1964.

Foreign Exchange was declared illegal, the period for filing a claim for refund must be within six years since it is based upon a quasi-contract in accordance with Section 1145(2) of the New Civil Code as the Tax Code is silent on this point. The payment in this case was made by reason of a mistake in the interpretation of Republic Act No. 601, and therefore, the obligation to return arises by virtue of Article 2155 in relation to Article 2154 which refers to *solutio indebiti.* And *solutio indebiti* is classified as a quasi-contract under section 2, Title XVII of the New Civil Code. Consequently, the prescriptive period is six years under Article 1145(2) of the New Civil Code.

XII. COURT OF TAX APPEALS

A. JURISDICTION OF THE COURT OF TAX APPEALS

Section 7, Republic Act No. 1125 provides that "The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, in provided—

(1) Decisions of the Collector of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other matters arising under the National Internal Revenue Code or other law or part of law administered by the Bureau of Internal Revenue;

(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizures, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law administered by the Bureau of Customs; and

(3) Decisions of Provincial or City Board of Assessment Appeals in cases involving the assessment and taxation or real property or other matters arising under the Assessment Law, including rules and regulations relative thereto."

(1) *Once the assessment of the Commissioner of Internal Revenue has become final and executory, such cannot be appealed to the Court of Tax Appeals.*

Under Section 7 of Republic Act No. 1125, the Court of Tax Appeals is given exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, or other matters arising under the National Internal Revenue Code. And pursuant to section 11 of the same Act, any person or entity adversely affected by the decision of the Commissioner of Internal Revenue shall appeal to the same court within thirty days after the receipt thereof, and if the assessment of the Commissioner,

or his decision, is not appealed to the Court of Tax Appeals within the aforesaid period such assessment becomes final, demandable and executory.[91]

(2) *Claim that assessment cannot become final because it is contrary to law is a matter of defense.*

The claim that the assessment cannot become final because it is contrary to law is a matter of defense which the taxpayer should have set up in the proper court and failure to do so when it failed to appeal to the Court of Tax Appeals within the time prescribed by law is a bar to such claim.[92]

(3) *Manifestation and motion filed by the Commissioner of Internal Revenue considered motion for reconsideration under Rule 38 of the Rules of Court, so it is still presentable within 60 days of the order of the Court of First Instance declaring testate proceeding closed and which the Commissioner of Internal Revenue sought to suspend.*

In the case of *Commissioner of Internal Revenue v. Limlimgan, et al.*,[93] the Court of First Instance issued an order dated February 1, 1962 declaring the testate proceeding closed. On March 7, 1962, the Commissioner of Internal Revenue filed a Manifestation and Motion in the proceeding to the effect that the amounts of state and inheritance taxes appearing in the receipts to have been paid represent only a portion of the taxes due. But the *court a quo* denied such and estate taxes to have been paid as appear in the receipts represent motion. Hence this action for certiorari. The Court held: "Considering that the Commissioner of Internal Revenue had no knowledge of the proceedings except the payment of the taxes and had had no time to check the correctness of the amounts paid, we should consider the motion of the Commissioner of Internal Revenue as a motion for reconsideration under Rule 38 of the Rules of Court and, therefore, presentable within 60 days of the order sought to be suspended. In view of Rule 9, sec. 1 of the Rules of Court and Sec. 103 of the Tax Code, the court committed an abuse of discretion in denying the motion for reconsideration of its order closing the proceedings."

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[91] Republic v. Enrique Magalona, Jr., L-15002, Sept. 30, 1960; Republic v. Albert, L-12996, December 28, 1961; Republic v. Juana B. Vda. de Del Rosario, et al., L-10460, March 11, 1959; Uy Ham v. Republic, L-13809, October 20, 1959, cited in the case of Republic v. The Manila Port Service, G.R. No. L-18208, November 27, 1964.

[92] *Ibid.*

[93] G.R. No. L-19849, May 25, 1964; Sec. 103 of the Tax Code provides "No judge shall authorize the executor or judicial administrator to deliver a distributive share to any party interested in the estate unless it shall appear that the estate tax has been paid."

(4) *Only final decisions of the Commissioner of Customs are appealable to the Court of Tax Appeals and when the Commissioner of Customs has not rendered a decision, appeal to the Court of Tax Appeal is premature.*

In the case of *CMS Estate, Inc. v. Commissioner of Customs, et al.*,[94] the Court held that the petition for review filed with the Court of Tax Appeals is premature, inasmuch as no written protest or appeal from the action or decision of the Collector of Davao City was taken pursuant to the provisions of Sections 2309 and 2313 of the Tariff and Customs Code. As repeatedly held by our Supreme Court, only final decisions of the Commissioner of Customs are appealable to this Court.[95]

To the same effect is the case of *Ace Publication, Inc. v. Commissioner of Customs, et al.*,[96] where the Court held that the Court of Tax Appeals was acting within its authority when it dismissed the petitioner's action for refund when it appears that there was no decision of either the Collector or the Commissioner of Customs which should be reviewed; for although there were formal requests for refund, both respondent officials failed to act thereon, one way or another. Hence, under Section 7(2) of Republic Act No. 1125, the petition for review filed by the taxpayer was premature.

(5) The Court of Tax Appeals in an action for refund is bound to take notice of the limits of its authority and it may, by its own motion, even suggested by counsel, recognize the want of jurisdiction and accordingly act, by staying pleadings, dismissing the action, or otherwse noticing the defect, at any stage of the proceeding.[97]

(6) *Cannot apply by analogy the interpretation given to Sec. 306 of the Tax Code in the case of Dental case to par. 2, section 7 of Republic Act No. 1125*

Petitioner contends that the Court of Tax Appeals has jurisdiction over the case, claiming that this matter had been settled in the case of College of Oral and Dental Surgery v. Court of Tax Appeals, *et al.*,[98] wherein the Court made the following observation:

> "Although the filing of the claim with the Collector of Internal Revenue is intended as notice of said official that unless the tax or penalty alleged to have been erroneously or illegally collected is refunded, court

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[94] G.R. No. L-18773, January 31, 1964.
[95] Rufino Lopez & Sons, Inc. v. Court of Tax Appeals, L-9274, February 1, 1957; Sampaguita Shoe Factory & Slipper Factory v. Commissioner of Customs, L-10285, January 14, 1958.
[96] G.R. No. L-18808, May 29, 1964.
[97] *Ibid.*, 15 C.J., 852 cited.
[98] L-10446, January 28, 1958, 54 O.G. 7055.

action will follow, this does not imply that the taxpayer must wait for the action of the Collector before bringing the matter to the Court. Indeed it must be observed that under section 306 of the National Internal Revenue Code, the taxpayer's failure to comply with the requirements, regarding the institution of the action or proceeding in court within two years after the payment of the tax bars him from the recovery of the same, irrespective of whether a claim for the refund of such taxes filed with the Collector of Internal Revenue is still pending action of the latter."

Petitioner admits that no mention of par. 2 section 7 of Republic Act No. 1125 was made in the above decision. It argues that "it logically follows as well as legally by the rules of statutory construction that the same interpretation shall be given to par. 2, section 7 of Republic Act No. 1125. To say otherwise would be to discriminate against customs taxpayers and favor internal revenue taxpayers on the matter of refund of taxes illegally assessed and collected.[99]

The Court held: "We cannot by mere analogy, apply the interpretation given to Sec. 306 of the Internal Revenue Code to Sec. 7(2) of Republic Act No. 1125. Not only was the petition directed against the Customs officials, but it also appears that sec. 306 has no counterpart in the Tariff and Customs Code. There is no statutory grant for importers claiming refund of duties to go directly to the Court of Tax Appeals, without waiting the decision of the Collector of Customs or Commissioner of Customs. For one thing, the Collector or Commissioner may order the refund of taxes in question, in which event a review would not be necessary." [100]

(7) *Phases of appeal of an importer or person aggrieved by a decision or ruling of any Collector of Customs*

The appeal made available to any importer or person aggrieved by a decision or ruling of any collector of customs of the Philippines has two phases: *first*, the one provided for in sec. 1380 of the Revised Administrative Code by which such party is given 15 days from receipt of the adverse ruling or decision of the Collector to give notice in writing to the latter signifying his desire to have the matter reviewed by the Commissioner of Customs, and the *second*, if still dissatisfied, his appeal could be projected to the Court of Tax Appeals pursuant to Section 7 of Republic Act No. 1125 by filing with said tribunal a petition within 30 days from receipt of notice of the decision or ruling sought to be reviewed.[101]

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[99] J.J. Keipner Co., Ltd. v. David, L-5163, April 22, 1953.
[100] See Note 96.
[101] See Note 96.

(8) *Once decision of the Commissioner of Customs becomes final and executory, such decision cannot be appealed to the Court of Tax Appeals.*

In the case of *Philippine International Surety Company, Inc. v. Commissioner of Customs*,[102] the Collector of Customs of Manila seized certain merchandise consigned to one Santos for lack of Central Bank Release Certificates and consular invoices. A bond was furnished by the petitioner in order to secure the release of the merchandise. On April 30, 1955, the Collector of Customs ordered the seizure of the merchandise in favor of the government. Petitioner was notified of the decision on Oct. 4, 1955. Santos appealed from the decision of the Collector of Customs to the Commissioner of Customs but the latter affirmed the decision of the former. On February 1, 1960, petitioner filed a petition for review with the Court of Tax Appeals.

The Court held the petitioner's appeal was without merit. The decision of the Collector of Customs in the seizure proceedings in effect held petitioner jointly and severally liable with the principal Santos for the amount covered by the bond funished by petitioner as his surety, because should Santos fail to pay said amount, the bond furnished by petitioner will surely answer for said obligation in an action filed in court to enforce its collection. Petitioner although duly notified (on October 4, 1955) of said decision, failed to appeal therefrom to herein respondent Commissioner of Customs as required by law (Sec. 1380 of the Revised Administrative Code). Having failed to do so, said decision became final and executory as to petitioner and, consequently it lost its standing to institute the present petition for review.

B. Who May Appeal

Section 11 of Republic Act No. 1125 provides that "any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after receipt of such decision or ruling."

(1) In the case of *City of Manila, et al. v. The Board of Assessment Appeals, et al.*,[103] the Court held that the City of Manila is a corporation adversely affected by the decision of the Board of Assessment Appeal and therefore may validly appeal from said decision to the Court of Tax Appeals. Pursuant to Section 78 of Republic Act

[102] G.R. No. L-18291, January 31, 1964.
[103] G.R. No. L-18784, April 30, 1964.

No. 409 which is the Revised Charter of the City of Manila, "one fourth of all moneys realized from the real estate tax"—of "one-half per centum on the assessed value of all real estate in the City subject to taxation", as provided in Section 64 of the same Act—"shall be devoted exclusively to the support of free public primary schools of the City and to the erection and maintenance of suitable school buildings", without prejudice to the authority of the municipal board "to appropriate from the general resources of the city additional funds for the support of those and other duly authorized public school and maintenance of school buildings."

(a) *Distinguished from the case of Collector of Customs v. Court of Tax Appeals* [104]

The lower court held that the "joining of the City of Manila as co-petitioner is of no legal consequence for it has been held that x x x the Government cannot appeal to this Court", citing the above case. The Court, however, held: "We have not ruled so in the case cited, the doctrine therein laid down being merely that the Collector of Customs of Manila cannot appeal to the Court of Tax Appeals from a decision of his administrative superior. Such is not the issue in the case at bar."

(b) With respect to the joining of the City Assessor of Manila as co-party to the appeal, the Court held that the latter has no personality to appeal, it being in accordance with the ruling in the cases of Ursal v. Court of Tax Appeals, L-10123, April 26, 1957 and Ursal v. Court of Tax Appeals, L-10165, August 30, 1957.[105]

(2) The ruling laid down in the case of *City of Manila, et al. v. City Board of Assessment Appeals, et al., supra* is reiterated in the subsequent case of *Municipal Board, in representation of the City of Cebu v. Court of Tax Appeals, et al.*[106] The court held that under its charter it is a municipal corporation with capacity to sue and be sued. In the decision of the Board of Assessment Appeals exempting certain lots from the payment of real property tax, no entity is more adversely affected than the City of Cebu, for it stands to lose a yearly income equivalent to the realty tax of seven-eights of one per centum on the assessed value of the lots in controversy.

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[104] L-8811, October 31, 1957.

[105] In said cases a Board of Assessment Appeals reduced the assessment made by the City Assessor, for taxation on real property. The Court held that the City Assessor has no personality to resort to the Court of Tax Appeals for the review of such reduction, since the ruling of the Board did not adversely affect but the city itself.

[106] G.R. No. L-18946, December 26, 1964.

(a) As to the personality of the Municipal Board to represent the City of Cebu, the Court held that Sec. 58 of its charter expressly grants to the Municipal Board authority to appeal from the decision of the Board of Assessment Appeals. This indicates a legislative intent to lodge in the Municipal Board the right to represent the City in an appeal from an adverse decision of the Board of Assessment Appeals.