TAXATION

PERFECTO V. FERNANDEZ*

I. INCOME TAXATION

1. *Accrual of income*

Under the accrual method of reporting income, taxable income comes into existence when all the events have occurred which fix the right to receive the income and the amount can be determined with reasonable accuracy.[1] Thus, a taxpayer on accrual basis was deemed to have derived income for the taxable year 1951 from copra sold and shipped in said year to a foreign copra buyer, notwithstanding that the taxpayer had not yet received the price in full.[2]

2. *Constructive receipt*

Under the doctrine of constructive receipt, a taxpayer is deemed to have received income where an amount owing to him is set off against his debt by the creditor.[3] Such doctrine, however, is applicable only where the set off is made against a debt acknowledged by the taxpayer or the validity of which is not otherwise questioned. Where the validity of the debt is contested by the taxpayer, the doctrine of constructive receipt is inapplicable.

In *Republic v. de la Rama,*[4] the Commissioner sought to apply this doctrine to dividends due and payable but not actually received. When such dividends were declared in 1950, no payment was actually made thereof to the stockholder, Esteban de la Rama. Instead, the 1950 dividends due him were credited to or set-off against his personal accounts with the corporation. De la Rama died without having actually collected such dividends and the income tax returns filed in behalf of his estate for 1950 did not include them. Subsequently, a deficiency assessment was issued against the estate, based on the undeclared dividends, which ac-

* Lecturer, College of Law and Legal Officer, University of the Philippines.

[1] Montgomery, Federal Taxes, Sec. 8.91 (38th Ed., 1961).

[2] Republic v. Lim Tian Tong Sons & Co. Inc., G.R. No. 21731, March 31, 1966.

[3] Montgomery, *op. cit.*, 1.31.

[4] Republic v. De la Rama, G.R. No. 21108, November 29, 1966.

cording to the Commissioner had been constructively received in 1950 when the set-off against the personal debts of the deceased was made by the corporation.

In behalf of the estate, however, it was contended that the doctrine of constructive receipt was inapplicable to the situation. For the doctrine to apply, the set-off must be against valid debts of the taxpayer. But the so-called personal accounts of the late Esteban de la Rama with the corporation were not valid debts. At any rate, his liability for such debts was never recognized, nor properly established.

On this point, the high Court sustained the taxpayer. It ruled that the so-called personal accounts of Esteban de la Rama were not valid debts. Of the two items, the first was contested and proof was lacking to show its existence and validity. The second was actually the debt of another person, Hijos de I. de la Rama, Inc. It was true that Esteban de la Rama was the principal stockholder of said corporation, but as its personality was separate and distinct, its debts could not be charged to the deceased in the absence of proof of a substitution of debtor. With such findings, the Court concluded that inasmuch as the dividends in question had not been received either actually or constructively in 1950, no tax could be due thereon for said year.

Income is deemed constructively received where the taxpayer has an unqualified right to receive the same but by his own choice the income is not reduced to possession.[5]

In the case of *Limpan Investment Corporation vs. Commissioner of Internal Revenue*,[6] the doctrine of constructive receipt was applied favorably to the Government. A deficiency income tax assessment was issued against taxpayer upon its 1957 tax returns. Said assessment was based, among others, upon the non-declaration of rentals for 1957. One item referred to ₱10,800.00 in rentals which one tenant had offered to pay in 1957 but which taxpayer had refused. Consequently, the tenant was compelled to deposit the amount in court. It was only in 1958 that the amount was withdrawn and received by taxpayer. Was such amount income for 1957? The Supreme Court gave an affirmative answer. Since the deposit was resorted to due to the refusal of taxpayer to accept the rental, and not due to any fault of the tenant, taxpayer was deemed to have received the same constructively in 1957.

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[5] Income Tax Regulations, Section 52.
[6] Limpan Investment Corp. v. Commissioner, G.R. No. 21570, July 26, 1966.

3. *Taxable period*

Income should be reported in the year of its accrual or receipt.[7] Where the taxpayer on an accrual basis had only sold and shipped copra in 1951, the agreed sales price therefor should have been declared as income tax for 1951 notwithstanding that the full price had not yet been received.[8]

In the case of *Limpan Investment Corp. v. Commissioner*,[9] taxpayer corporation tried to explain its non-declaration of rentals with an alleged agreement between the corporation and the previous owners of its rental properties. Under this so-called agreement, the previous owners would pay over six per cent of the current value of the rental properties, in exchange for which the previous owners would collect the rentals from the tenants. The Supreme Court rejected this explanation, not only because it was unusual but also because it was uncorroborated by competent evidence, such as documents or testimony of the other parties allegedly involved.

Another claim advanced by the same taxpayer corporation was that it was under no duty to declare as income rentals received directly from one of the sub-tenants in its buildings. This was also rejected by the high Court. The payment by the subtenant to taxpayer in 1957 should have been reported as rental income in said year, since it was income regardless of its source.

4. *Deduction of interest on tax*

It is a well settled rule in our jurisdiction that tax obligations constitute indebtedness for purposes of deduction from gross income of the amount of interest paid on indebtedness.[10] In *Commissioner v. Palanca*,[11] the issue was deductibility of interest paid for late payment of estate and inheritance taxes. Did such taxes constituted "indebtedness" for purposes of the Tax Code?

In sustaining the claim of the taxpayer, the Court pointed out that while taxes and debts are distinguishable legal concepts, in certain cases, the distinction becomes inconsequential with respect to the interests paid upon them.

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[7] Income Tax Regulations, Section 170.
[8] Republic v. Lim Tian Teng Sons & Co. Inc., *supra*, at note 2.
[9] *Supra*, see note 6.
[10] Commissioner v. Palanca, G.R. No. 16626, Oct. 29, 1966; Sambrano v. Court of Tax Appeals, G.R. No. 8652, March 30, 1957, 53 O.G. 4839 (Aug.. 1957); Commissioner of Internal Revenue v. Prieto, G.R. No. 13912, September 30, 1960
[11] *Ibid.*

In amplification of its ruling sustaining the taxpayer, the Court quoted its decision in the *Prieto case*:[12]

> "Under the law, for interest to be deductible, it must be shown that there be an indebtedness, that there should be interest upon it, and that what is claimed as an interest deduction should have been paid or accrued within the year. It is here conceded that the interest paid by respondent was in consequence of the late payment of her donor's tax, and the same was paid within the year it is sought to be deducted. The only question to be determined, as stated by the parties, is whether or not such interest was paid upon an indebtedness within the contemplation of section 10(b) (1) of the Tax Code. . . .
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> 'The term "indebtedness" as used in the Tax Code of the United States containing similar provisions as in the above-quoted section has been defined as the unconditional and legally enforceable obligation for the payment of money. (Federal Taxes Vol. 2, p. 13,019, Prentice Hall, Inc.; Mertens' Law of Federal Income Taxation, Vol. 4, p. 542.) *Within the meaning of that definition, it is apparent that a tax may be considered as indebtedness.*'" . . .

The high Court then further observed:

> ". . . In both this and the said case, the taxpayer sought the allowance as deductible items from the gross income of the amounts paid by them as interests on delinquent tax liabilities. Of course, what was involved in the cited case was the donor's tax while the present suit pertains to interest paid on the estate and inheritance tax. This difference, however, submits no appreciable consequence to the rationale of this Court's previous determination that interests on taxes should be considered as interests on indebtedness within the meaning of Section 30(b) (1) of the Tax Code. The interpretation we have placed upon the said section was predicated on the congressional intent, not on the nature of the tax for which the interest was paid."

5. *Depreciation*

Bulletin F of the United States Federal Internal Revenue Service has been repeatedly held by our Supreme Court as having persuasive force in determining depreciation rates applicable to certain types of property.[13] In the *Limpan Investment case*,[14] the Court ruled:

> ". . . It appearing that the Tax Court applied rates of depreciation in accordance with Bulletin 'F' of the U.S. Federal Internal Revenue Service, which this Court pronounced as having strong persuasive effect in this jurisdiction, for having

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[12] *Supra*, at note 10.

[13] Zamora v. Collector of Internal Revenue, G.R. Nos. 15280-81, 15289-90, May 31, 1963.

[14] *Supra*, see note 6.

> been the result of scientific studies and observation for a long period in the United States, after whose Income Tax Law ours is patterned."

In said case, the deficiency income tax assessment stemmed in part from the disallowance of excess depreciation claimed by the taxpayer on its rental properties. The disallowance was based on the application of the depreciation rates provided in said Bulletin "F". Taxpayer claimed that higher rates were applicable, since the properties were old and out of style. The Tax Court sustained the disallowance of excess depreciation. In upholding this particular finding of the Tax Court, the Supreme Court observed:

> ". . . 'depreciation is a question of fact and is not measured by theoretical yardstick, but should be determined by a consideration of actual facts', and the findings of the Tax Court in this respect should not be disturbed when not shown to be arbitrary or in abuse of discretion.[15]

II. Business Taxation

1. *Specific taxes on denatured alcohol*

The Tax Code provides:[16]

> Sec. 142. Specific tax on manufactured oils and other fuels. — On refined and manufactured mineral oils and motor fuels, there shall be collected the following taxes:
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> (b) On denatured alcohol to be used for motive power, per liter of volume capacity, one centavo: Provided, That if the denatured alcohol is mixed with gasoline, the specific tax on which has already been paid, only the alcohol content shall be subject to the tax herein prescribed. For the purposes of this subsection, the removal of denatured alcohol of not less than one hundred eighty degrees proof (ninety per centum absolute alcohol) shall be deemed to have been removed for motive power, unless shown to the contrary. (As amended by Rep. Acts Nos. 56 & 1435, approved June 14, 1956).

In the case of *Central Azucarera Don Pedro v. Court of Tax Appeals*,[17] the Supreme Court had occasion to apply this statutory presumption. The taxpayer made sales of denatured alcohol over a period of years. Such denatured alcohol was not less than 180 degrees proof (ninety per centum absolute alcohol). Claiming the sales were made of denatured alcohol for motive power, it paid the special rate of one centavo per liter for such

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[15] Citing Commissioner of Internal Revenue v. Priscila Estate Inc., G.R. No. 18282, May 29, 1964.

[16] Tax Code, Sec. 142.

[17] Central Azucarera Don Pedro v. Court of Tax Appeals, G.R. No. 21139, April 30, 1966.

alcohol. The Commissioner of Internal Revenue issued a deficiency assessment for sales tax, on the ground that such denatured alcohol was sold for industrial uses, not particularly for motive power.

In support of its claim that the sales of denatured alcohol were *not* for motive power, the Bureau of Internal Revenue presented evidence that such sales consisted of two groups: first, the denatured alcohol produced with gasoline as the ingredient denaturant, and second, those produced without gasoline. While recognizing the statutory presumption in favor of the taxpayer, the Tax Court insisted that such presumption had been overcome. The contention essentially was that while the first category of sales involved the use of gasoline as denaturant, the second did not, and therefore, the denatured alcohol must have been put to industrial uses *other than* motive power. In rejecting this inference, the high Court observed:

> ". . . there is no evidence to show in any way that only the alcohol denatured with gasoline was, or can be, used for motive power. From the fact that gasoline-denatured alcohol can be used for motive power, it does not necessarily follow that alcohol denatured with other substance is unfit for such use. In fact, there is no showing what other substances, besides gasoline, were used by the Central for denaturing purposes."
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> ". . . in establishing the presumption of use for motive power, the law makes no mention of the kind of denaturant mixed with the alcohol, the only requirement being that the product be not less than 180 degrees proof (or 90% absolute alcohol); which, in the case at bar is not disputed."

In sustaining the Bureau's claims, the Tax Court further ruled that the taxpayer should have proved that the alcohol *not* denatured with gasoline had been sold for motive power. The high Court also rejected this ruling and sustained the presumption.

> "The conclusion of the tax court, that it behooved the taxpayer to show for what purposes the alcohol *not* denatured with gasoline was devoted, is not warranted by the statute. On the contrary, it is manifest therefrom that the burden is laid by law upon the Internal Revenue authorities to prove that the taxed alcohol was actually removed for uses other than motive power. . . ."

2. *Sales tax on lumber exports*

Prior to its amendment, Section 186 of the Tax Code had been repeatedly construed by the Supreme Court to the effect that where the terms of the sale of logs to foreign buyers were "F.O.B." at a designated part in the Philippines, the parties are

considered to have intended a transfer of title at the place of delivery, hence the situs of such sales was within Philippine territory.[18]

In the case of *Butuan Sawmill, Inc. v. Court of Tax Appeals*,[19] the settled rule on this point again received application. Taxpayer was engaged in the lumber business. From 1951 to 1953, it sold logs to Japanese buyers at prices F.O.B. Vessel Magallanes or Nacipit, both towns in Agusan province. The F.O.B. prices included costs of loading, wharfage, stevedoring and other costs in the Philippines. The freight was paid by the Japanese buyers. Finally the payments of the logs were effected by means of irrevocable letters of credit in favor of the taxpayer, payable through the Philippine National Bank or any other bank named by it. On these facts, the Supreme Court affirmed the ruling of the Tax Court that the parties intended the title to pass to the buyer upon delivery of the logs on board the vessels anchored within Philippine waters.

3. *Exemption from the sales tax*

Under Section 188 of the Tax Code, agricultural products are exempt from the sales tax when sold by the farmer or producer whether in their original form or not. Applying the statute, the Supreme Court held that the various raw rubber materials produced by the taxpayer from its rubber plantation were "agricultural products", rather than "manufactured articles", hence exempt from the sales tax. In this case, the Government had contended that since the raw latex was subjected to chemical and physical processing before being sold in the market, there was "manufacturing" as this term is defined for purposes of the sales tax. In rejecting this contention, the high Court adverted to the same considerations underlying its decision in the *Philippine Packing Corporation*[20] case and pointed out that, as in the case of canned pineapples, the operations performed with respect to the latex and other raw materials were purely preservative, hence, purely incidental to production on a large scale.

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[18] Taligaman Lumber Co., Inc. v. Collector of Internal Revenue, G.R. No. 15716, March 31, 1962; Bislig Bay Lumber Co., Inc. v. Collector of Internal Revenue, G.R. No. 13186, January 28, 1961; Western Mindanao Development Lumber Co., Inc. v. CTA, G.R. No. 11719, June 30, 1958; and Misamis Lumber Co., Inc. v. Collector of Internal Revenue, G.R. No. 10131, September 30, 1957; 56 O.G. 517 (Jan., 1960).

[19] Butuan Sawmill, Inc. v. Court of Tax Appeals, G.R. No. 20601, February 28, 1966.

[20] 100 Phil. 545 (1956).

4. *Business tax on commercial broker*

In two cases,[21] the Supreme Court ruled on the scope of the term commercial broker for purposes of the fixed tax under Section 142 of the Tax Code. The same result was reached in both these cases, to the effect that taxpayers were engaged in the business of importer, not commercial broker. The rationale underlying these rulings is that where the taxpayer, in carrying out business transactions, does not act as negotiator or middleman to close a deal between one person and another, or does not work or contract in the name of another, he cannot be considered a broker.

> "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 other parties, never acting in his own name, but in the name of *those who employed him*; he is strictly a middleman and for some purposes the agent of both parties."[22]
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> ". . . the essential feature of a broker is the fact that he acts not for himself, but, for a third person."[23]

In the first case,[24] the taxpayer took part and won in a public bidding to supply certain materials to the agency for U. S. aid, then called PHILCUSA. All such bids or proposals were submitted in his name. Upon winning the bid, taxpayer was awarded the contract executed in his name to supply the specified materials. To carry out his obligations under the contract, taxpayer undertook the importation of the goods agreed upon. All such importations were in taxpayer's name. The letters of credit were sent to his business address and such letters of credit, together with performance bonds, invoices and all other documents relative to the importations were in his name. The contracts of taxpayer with the foreign suppliers were strictly between him and the latter. No privity of contract existed between the PHILCUSA and the foreign suppliers. Under such facts, taxpayer was held to be an importer, not a commercial broker.

In the case of *Commissioner of Internal Revenue v. Cadwallader Pacific Company*,[25] taxpayer was a domestic corporation with

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[21] Collector v. Tan Eng Hong, G.R. No. 16893, Oct. 22, 1966; Commissioner v. Cadwallader Pacific Co., G.R. No. 18297, November 29, 1966.

[22] Behn, Meyer & Co. Ltd. v. Nolting and Garcia, 35 Phil. 274 (1916), quoted in Kuenzle and Streiff, Inc. v. Commissioner of Internal Revenue, G.R. No. 17643, Oct. 31, 1964.

[23] Kuenzle and Streiff Inc. v. Comm., *supra*, citing Kerr & Co. Ltd. v. Collector of Internal Revenue, 70 Phil. 36 (1940); Behn, Meyer & Co. Ltd. v. Nolting and Garcia, 35 Phil. 274 (1916) quoted in Collector v. Tan Eng Hong, *supra*, see note 20.

[24] Collector of Internal Revenue v. Tan Eng Hong, *supra*, see note 20.

[25] *Supra*, see note 20.

a buying office in California. In the course of its business, taxpayer sells various kinds of merchandise to local buyers. Under the contracts of sale, the taxpayer is named as seller and the local customer as buyer. The irrevocable letters of credit are drawn by the buyer in favor of the seller, not of anybody else. No payment is made by the local customer to any foreign manufacturer or supplier. Taxpayer exclusively owned the price paid by the customer. Taxpayer itself undertakes, through its California office, the purchase of the foreign commodities. Under the contract with the foreign supplier, no privity of contract existed between such foreign supplier and the local customer. The taxpayer alone assumed the risk of nonpayment by the local buyer; on the other hand, the buyer is liable to the taxpayer alone for the payment of the price. Under such facts, it was also held that taxpayer was an importer, not a commercial broker, since it did not act as negotiator or middleman to close a deal between one person and another, nor did it work or contract in the name of another.

III. Municipal Taxation

1. *Constitutionality of enabling law*

Under R.A. 1435, municipal boards and councils may levy an additional tax not exceeding 25% of the rates fixed in Section 142 and 145 of the Tax Code on manufactured oils sold and distributed within the limits of the city or municipality.

In one case,[26] this statutory authority was claimed to be unconstitutional. Two grounds were relied upon. First, R.A. No. 1435 actually legislates on two subject matters, namely: (1) the amendment of Sections 142 and 145 of the Tax Code, and (2) the grant of a taxing power to local governments. While sections 1 and 2 of said law specifically amended Sections 142 and 145 of the Tax Code by increasing the tax rates therein provided, sections 4 and 5 of the same law authorizes local governments to impose taxes on sales or distribution of gasoline. Such diversity of subject matter violates the well-known constitutional provision that "No bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill."

Second, there is absolutely nothing in the title of R.A. No. 1435 which suggests that it is a statute granting local governments certain specific taxing powers. Said law is entitled "An Act to Provide Means for Increasing the Highway Special Fund." More-

[26] Municipality of Jose Panganiban v. Shell Company of the Philippines Ltd., G.R. No. 18349, July 30, 1966.

over, while the law announces in its title that it is an enactment to increase the Highway Special Fund, Section 5 thereof decrees the accrual of collections thereunder to the Road and Bridge Fund. This variance is material because the Highway Fund is a national fund established by statute, whereas the Road and Bridge Fund is for local appropriations. Accordingly, said R.A. No. 1435 is fatally defective, because the recital in the body of the law is not expressed in its title, as required by the Constitution.

In upholding the validity of R.A. No. 1435, the high Court met the first argument of defendant gasoline company with the observation that the law embraced but *one* subject, which is increasing the Highway Special Fund, but provided for *two* measures in carrying out its purpose.

> "Republic Act No. 1435 deals with only one subject and proclaims just one policy, namely, the necessity for increasing the Highway Special Fund. Its provisions that certain sections of the revenue code should be amended and that local governments should be granted a taxing power not therebefore enjoyed by them are not really its subject matter, but rather, the two modes or means devised by Congress to realize or achieve the alleviation of the Highway Special Fund. Plainly, therefore, the said law measures up to the standard set by aforequoted Constitutional provision."

Regarding the second argument, the high Court observed that the reference in R.A. No. 1435 to the Bridge and Road Fund did not establish that the contents of the law were foreign to or not expressed in its title, because the very same law cited by defendant is documentary evidence on the direct and substantial relation of the Special Highway Fund and the Bridge and Road Fund. In fact, one half of the apportionable balances in the Highway Special Fund is assigned or allocated by law to the Road and Bridge Fund.

> ". . . There can be nothing constitutionally questionable, therefore, in a law which makes reference to the Road and Bridge Fund although its title speaks alone of the Highway Special Fund. The two funds are, while distinguishable, directly and substantially germane to each other. Thus they so relate to each other that the use of one in the title do justify legislating in the body on the other. The constitutional rule at bar is satisfied if all parts of a law relate to the subject expressed in its title."

2. *Tax situs of gasoline tax*

Under R.A. No. 1435, the authority of a municipal corporation to impose taxes on transfers of gasoline is limited to "manu-

factured oils sold or distributed within the limits of the city or municipality." With the taxing jurisdiction of each city or municipality thus circumscribed, it becomes very important to determine the situs, for tax purposes, of each sale or distribution of gasoline and other manufactured oils.[27]

In this connection, the Supreme Court had already dealt with the question of the taxable situs of gasoline sales in a previous case.[28] The municipality of Sipocot had assessed municipal taxes levied under R.A. No. 1435 upon sales of gasoline, which were delivered at places outside or beyond the limits of the municipality. In holding that the taxes were illegally imposed for lack of a taxable situs, the Supreme Court observed:

> "From the explanatory note and the general discussion in Congress over the bill...it can readily be gathered that one of the main purposes for the enactment of the law was to provide for the construction and the improvement of principal road systems in municipalities... The logical conclusion would accordingly follow that the taxable situs of the property to be taxed should be where the same is used. This place is ordinarily the place of delivery... The term "sold" under the statute and ordinance in question does not mean a mere perfected contract but a consummated sale, where delivery becomes of the essence in determining the situs of the sale."

Adverting to a number of its decisions involving the sales tax, the Supreme Court approved the rule that:

> ". . . for a sale to be taxed in the Philippines it must be consummated there, thus indicating that the place of consummation (associated with the delivery of the things subject matter of the contract) is the accepted criterion in determining the situs of the contract for purposes of taxation, and not merely the place of the perfection of the contract."

In a case involving the same gasoline company,[29] municipal taxes were levied under authority of R.A. 1435 upon its sales of gasoline delivered within the municipal limits of plaintiff municipality. Claiming somewhat inconsistently that the taxes were illegal for lack of a taxable situs, the gasoline company argued that the sales having been perfected in Manila, it is the latter city, not plaintiff municipality, which had taxing jurisdiction over said sales.

The high Court overruled this contention with considerable asperity.

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[27] 10 McQuillin Municipal Corporations, 243-245 (1950).

[28] Shell Company of the Philippines v. Municipality of Sipocot, G.R. No. 12680, March 20, 1959.

[29] Municipality of Jose Panganiban v. Shell Co. of the Philippines, G.R. No. 18349, July 30, 1966.

". . . It is not the place where the contract was perfected, but the place of delivery, which determines the taxable situs of the property sought to be taxed. Thus, it is all inconsequential that, as the herein appellee makes much of, the subject transactions were perfected and consummated in Manila and that payments therefor to Shell were made in Manila by the purchasers."

"It does not seem sporting of the appellee herein to disavow the above ruling now. It was the one who vigorously argued its merit then, and now that it is sought to be given full effect and meaning, it complains that the said ruling is wrong, evidently because it is the subject of the implementation. Such an attitude speaks very weakly of the herein appellee's good faith."

3. *Exemption of persons paying franchise tax*

One of the classes of persons exempt from municipal tax is "persons paying franchise tax."[30] However, the same provision of the Local Autonomy Act authorizes taxation of public utilities, engaged in supplying electrical light, heat and power.[31] In view of such provisions, may a municipal tax be validly imposed on a public utility operating an electric light, heat and power system?

In two 1966 cases, the Supreme Court ruled that such a tax was illegal, for being ultra vires. In the case of *Butuan Sawmill, Inc. v. City of Butuan*,[32] a tax of 2 per cent on the gross sales or receipts of any business operating within the city was held invalid as applied to the plaintiff in the operation of its electric light, heat and power system within the city limits. Discounting the express authority to tax public utilities operating electric light, heat and power provided in Sec. 2 of the Local Autonomy Act, the Supreme Court ruled:

". . . The logical construction of section (1) of Republic Act 2264, that would nullify section 2 (j) of the same Act, is that the local government may only tax electric light and power utilities that are not subject to franchise taxes, unless the franchise itself authorizes additional taxation by cities or municipalities."

The same result was reached in the case of *Ilocos Norte Electric Co. v. Municipality of Laoag*,[33] where by the terms of its franchise, the franchise tax paid by the taxpayer was in lieu of any and all taxes of whatever kind, whether national or municipal.

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[30] Rep. Act No. 2264 (1959), Section 2, 2(j).
[31] *Id.*, Section 2(d).
[32] G.R. No. 21516, April 29, 1966.
[33] G.R. No. 21058, Nov. 23, 1966.

4. *Berthing fee invalid*

In *Everett Steamship Corporation vs. Municipality of Medina,*[34] defendant corporation imposed a berthing fee upon vessels moored at the municipal wharf. Plaintiff paid said fee on its vessels and then instituted a suit for refund on the ground that said fee was null and void. Defendant admitted that it can not levy "customs dues, registration, wharfage on wharf owned by the national government, tonnage and all other kind of customs fee, charges and dues." It insisted, however, that there is no express prohibition in the statute against the imposition of a berthing fee. Under the principle of *ejusdem generis,* the phrase "all other kinds of customs fee, charges and dues" must be limited to the class of words preceding the same, namely, "customs dues, registration, wharfage and tonnage." The Court, however, upheld the plaintiff's contention. Adverting to the well established rule that municipal taxing power is to be strictly construed, the Court declared the berthing fee as coming within the prohibited impositions, hence invalid.

> "It is true that the legislature has not expressly included *berthing fees* in either of the legal provisions abovequoted, but under the doctrine of *ejusdem generis* it may be said to fall under the general terms "all other kinds of customs fees, charges, and dues." Indeed, under the same ordinance in question, berthing fee is defined as "the amount assessed against a vessel for mooring or berthing at a pier or wharf of the municipality." Since this fee is charged precisely for the use that a vessel may make of the wharf of the Municipality of Medina, the same may partake of the nature of wharfage fee or tax which is denied to a municipality by both Commonwealth Act 472 and the Local Autonomy Act. As already stated, a municipal corporation does not have any inherent power to impose a tax or license as a means of raising revenue and if such power is granted it should be construed in *strictissimi juris.* Under such principle there is no doubt that the Muncipality of Medina has acted beyond its power in enacting the ordinance in question."

5. *Other municipal taxes*

In *King vs. City of Zamboanga,*[35] it was held that under charter authority to tax, the storage and sale of oil, gasoline, petroleum or any of the products thereof, ordinances imposing licenses taxes on the sale of gasoline, kerosene and oil were valid.

In the same case, taxpayer had claimed that the ordinances were invalid for lack of certification by the City Mayor. In

[34] Everett Steamship Corporation v. Municipality of Medina, et. al., G.R. No. 21191, April 30, 1966.

[35] Yu King v. City of Zamboanga, G.R. No. 20406, Dec. 29, 1966.

overruling this contention, the court pointed out that in the absence of clear evidence to the contrary, it must be presumed that official duty in connection with the enactment of the ordinance had been duly complied with. At any rate, it was incumbent upon taxpayer to prove the absence or lack of certification, which in this case was not done.

Regarding the alleged retroactivity of one of the ordinances, the same was not duly borne out by the facts, it being clear that the ordinance was made effective or retroactive for only five (5) days prior for its adoption or enactment. The court ruled that such insignificant circumstance did not render the measure void.

IV. OTHER TYPES OF TAXATION

1. *Special Assessment of Sugar Industries*

Under R.A. No. 632 which established the Philippine Sugar Institute, a tax was levied on sugar production for the support of the Institute.

In the case of *Republic of the Philippines v. Bacolod Murcia Milling Co., et. al.*,[36] the defendants refused to pay the balance of the taxes due under R.A. No. 632, on the ground that the expenditure of the funds collected under said law was no longer to their benefit and interest. It was claimed that the Institute had acquired and operated a sugar refinery at a tremendous loss and without corresponding benefit to those engaged in the sugar industry, including the defendants. Contending that the levy under said law constituted a special assessment, the defendants invoked the rule that the imposition or collection of a special assessment upon property owners who receive no benefit from such assessment amounts to a denial of due process.

In overruling the contentions of the defendants, the high Court relied upon its decision in the case of *Lutz v. Araneta*,[37] which dealt with similar issues. In said case, the tax levied by the Sugar Adjustment Act, which was constituted into a special "Sugar Adjustment and Stabilization Fund" to the development and improvement of the sugar industry, was sustained as an incidental measure to the valid exercise of police power.

In affirming the liability of the defendant sugar centrals for the tax under R.A. No. 632, the Supreme Court argued in much the same vein.

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[36] G.R. Nos. 19824-26, July 9, 1966.
[37] 98 Phil. 148 (1955).

". . . the special assessment at bar may be considered similarly as the above, that is, that the levy for the Philsugin Fund is not so much an exercise of the power of taxation, nor the imposition of a special assessment, but, the exercise of the police power for the general welfare of the entire country. It is, therefore, an exercise of a sovereign power which no private citizen may lawfully resist."

2. *Forest charges*

The Supreme Court has finally clarified the nature of forest charges. Its earlier views expressed in the Barredo case were revised and forest charges are now considered internal revenue taxes for purposes of the various provisions of the Tax Code including those on prescription.[38]

V. TAX ADMINISTRATION

1. *Valid tax return*

For purposes of prescription, the period for assessment prescribed in Section 331 of the Tax Code commences only with the actual filing of the tax return.[39] It is required in this connection that to accomplish this purpose, the tax return be valid. The validity of the tax return depends on whether the requirements of Section 93(a) of the Tax Code had been met. This point was ruled upon in a case involving an assessment for state and inheritance taxes.[40] The taxpayer resisted payment on the ground of prescription. It was contended that as the corresponding tax return was filed in 1949, the five-year period for assessment commenced to run from the date of filing. Inasmuch as the disputed assessment was made only in 1958, or more than 8 years following the filing of the tax return, the collection suit of the Government must necessarily fail.

In answer to this contention of the taxpayer, the Government maintained that while the tax return in question was actually filed, the same was not a valid return for failure to meet the requirements of Section 93(a) of the Tax Code. Consequently, such return was no return at all and, therefore, it could not have commenced the running of the five-year period for assessment.

In disposing of this issue, the high Court began with the observation that a return, in order to be valid, need not be complete in all particulars. It is sufficient, according to the Court,

[38] Cordero v. Conda, G.R. No. 22369, Oct. 15, 1966.
[39] See Tax Code, Sects. 45-47.
[40] Commissioner of Internal Revenue v. Gonzales, G.R. No. 19495, Nov. 24, 1966.

if it complies substantially with the requirements of law. As put by Mertens:

> "A return will usually be held to be in substantial compliance with the requirements of the law which (1) is made in good faith and is not false or fraudulent; (2) covers the entire period involved; and (3) contains information as to the various items of income, deduction and credit with such definiteness as to permit the computation and assessment of the tax."[41]

Applying the above criteria to the tax return filed in 1949, the Court found the tax return fatally defective. First, it was incomplete. Only 93 parcels of land were declared therein, leaving out 92 other parcels. The Court observed that such huge underdeclaration in the gross estate could not have been the result of an oversight or mistake.

Second, the tax return did not mention any heir, when there were several who were entitled to the estate. No inheritance tax therefore could be assessed. As a matter of law, according to the Court, on the basis of the return, there was no occasion for the imposition of estate and inheritance taxes. When there is no heir, as was indicated in the tax return, the intestate estate is escheated to the State. And the State taxes not itself.

Under the circumstances, the Court ruled in favor of the Government. The return was so deficient that it prevented the Commissioner from computing the taxes due on the estate. For purposes of the Tax Code, therefore, it was as though no return was made at all. The rule in the *Central Azucarera* case[42] was held inapplicable because the situation there was radically different. In that case, the return filed was complete in itself; it contained the necessary particulars, although some data was inaccurate. In the present case, however, the return was incomplete, as it did not include the data or particulars required in Section 93(a) of the Tax Code.

2. *Return must be appropriate*

In order to avail of the benefits of Section 331 of the Tax Code, the taxpayer must file a return that is not only complete but appropriate as well. A return is appropriate if it is a return for the particular tax required by law. Where the return filed is appropriate for one kind of internal revenue tax, it cannot be considered a return for another and different kind of internal revenue tax.

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[41] 10 Mertens, Law of Federal Income Taxation, 5713 (1964).

[42] Collector of Internal Revenue v. Central Azucarera de Tarlac, G.R. No. 11760, July 31, 1958.

This point was discussed in a case involving sales tax.[39] In 1957, a deficiency assessment for sales tax on logs sold to foreign firms was issued against taxpayer. This assessment was resisted by taxpayer on the ground, among others, that it was invalid because the period for assessment had prescribed. It contended that while admittedly no sales tax returns were filed, taxpayer had filed income tax returns. The filing of income tax returns may be deemed substantial compliance with the requirement of filing sales tax returns. Since returns were duly filed, the five-year period in Section 331 and not the ten-year period in Section 332(a) governs the assessment in the case. As taxpayer had filed its income tax returns in the years 1951 to 1953 and the assessment for deficiency sales tax was made only in 1957, the same was invalid for having been made beyond the five-year prescriptive period.

In rejecting this contention of the taxpayer, the high Court adverted to an earlier decision, *Bisaya Land Transportation Co, Inc. v. Collector of Internal Revenue.*[44] In this 1959 case, it was held that an income tax return cannot be considered as a return for compensating tax for the purpose of computing the period of prescription under Section 331 of the Tax Code. Similarly, the filing of income tax returns by taxpayer in the present case did not meet the requirement of filing sales tax returns. As no sales tax returns were filed, the assessment was validly made, having been issued within the ten-year period from discovery of the ommission, as provided in Section 332(a) of the Tax Code.

3. *Notice of assessment essential*

In order that an assessment may become final and executory for purposes of enforcement, it is required that service or notice of such assessment be given the taxpayer within the prescriptive period. In a case involving income taxes, a deficiency assessment for income taxes was issued against an estate while administration proceedings were still open. But the assessment was never sent to the administrator of the estate. Instead, it was sent a number of times to two heirs. The high Court ruled that under the circumstances, the assessment could not acquire finality.

> "The notice was not sent to the taxpayer for the purpose of giving effect to the assessment and said notice could not produce any effect. The person liable for the payment of the tax was the late Eliseo Hervas as administrator of the estate.

[43] Butuan Sawmill Inc. v. Court of Tax Appeals, *supra*, see note 19.
[44] G.R. Nos. 12100 & 11812, May 29, 1959.

> It apppearing that the person liable for the payment of the tax did not receive the assessment, the assessment could not become final and executory."

4. *Effect of finality of assessment*

In a case involving the deficiency of assessment of income taxes,[45] the Supreme Court pointed out that a final and executory assessment is virtually invulnerable to further question or attack by the taxpayer. In fact, the taxpayer may raise only questions of jurisdiction or fraud.

> "In a proceeding like this the taxpayer's defenses are similar to those of the defendant in a case for the enforcement of a judgment by judicial action under Section 6 of Rule 39 of the Rules of Court. No inquiry can be made therein as to the merits of the original case or the justness of the judgment relied upon, other than by evidence of want of jurisdiction, of collusion between the parties, or of fraud in the party offering the record with respect to the proceedings."

5. *Waiver of finality*

In a case involving deficiency of assessment of income taxes,[46] the Supreme Court ruled that under certain circumstances, the Government may waive the finality of the assessment. In this case there was no question that the deficiency assessment had become final and executory. When the government filed an ordinary action for the collection of the tax due under certain assessment, the taxpayer asserted the defense of prescription. It was the contention of the taxpayer that the assessment was invalid because it was issued after a lapse of five (5) years and three (3) months from the date that the corresponding income tax return was filed. Clearly, therefore, the assessment was beyond the period prescribed in Section 331 of the Tax Code. On the other hand, the government insisted that the assessment was valid. It was contended that since the income tax return was fraudulent, the period for assessing the deficiency tax was ten (10) years from the discovery of the fraud pursuant to Section 332 of the Tax Code. The lower court sustained the defense of the taxpayer on the ground that the complaint filed by the government for the collection of taxes alleged no fraud nor did the government present evidence of fraud. In sustaining the dismissal of the action, the Supreme Court pointed out that the taxpayer raised the defense of prescription in the proceedings below and the government instead of questioning the right of the defendant

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[45] Republic v. Lim Tian Teng & Sons Co., *supra*, see note 2.
[46] Republic v. Kerr & Co. Ltd., G.R. No. 21609, Sept. 29, 1966.

to raise such defense litigated on it and submitted the issue for resolution by the Court. By its actuation, the government was considered to have waived its right to object to the setting up of such defense.

6. *Institution of judicial suit*

The re-investigation requested by taxpayer in relation to a deficiency need not be completed before a judicial suit may be filed by the government. In a case involving deficiency assessment for income taxes[47] taxpayer requested a re-investigation of its 1952 income tax liability. Instead of answering taxpayer's request, the Collector referred it to the Solicitor General, who demanded payment of the tax in five days, otherwise a judicial action would be filed without further notice. Taxpayer, however, wrote another letter reiterating his request for reinvestigation. Towards the end of 1957, taxpayer was informed by the Deputy Collector that his request would be granted, provided that it executed within ten days a waiver of the statute of limitations as required in General Circular No. V-258 dated August 20, 1957. Taxpayer, however, failed to submit the required waiver. Accordingly, almost eight months later, specifically on September 2, 1958, a judicial action was filed for the collection of the deficiency income tax for 1952.

By way of defense, taxpayer contended that the lower court had no jurisdiction to entertain the action on the ground that there was as yet no final decision of the Collector on its requests for reinvestigation. Overruling this defense, the high Court pointed out:

> "Nowhere in the Tax Code is the Collector of Internal Revenue required to rule first on a taxpayer's request for re-investigation before he can go to court for the purpose of collecting the tax assessed."
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> ". . . Republic Act 1125 creating the Court of Tax Appeals allows the taxpayer to dispute the correctness or legality of an assessment both in the purely administrative level and in said court, but it does not stop or prohibit the Collector of Internal Revenue from collecting the tax through any of the means provided for in Section 316 of the Tax Code, except when enjoined by said Court of Tax Appeals."

7. *Suit upon bond*

In special cases where a surety bond is filed to insure payment of an admitted tax liability, a judicial action may be

[47] *Supra*, see note 2.

brought upon the bond itself. In such cases, liability upon the bond may be enforced independently of liability for the tax.[48] But where the surety bond is conditioned upon the *existence* of tax liability to be determined in a still pending case, the bond cannot be enforced where the final outcome of the case was against the existence of any liability on the part of the taxpayer.

In a case involving unpaid war profits taxes,[49] taxpayer disclaimed liability and first sought review before the Board of Tax Appeals. The Board found her liable for the tax, which she contested before the Supreme Court. In 1953, the Government filed a suit for the collection of the tax, but this action was dismissed and the dismissal was never appealed. In the meantime, taxpayer and respondent surety company had executed a surety bond for the payment of the tax if and when the decision of the Supreme Court would be adverse to the taxpayer. Subsequently, in 1954, the appeal of taxpayer was dismissed, on the ground that the Board of Tax Appeals was without jurisdiction to decide tax cases appealed to it. Subsequently, in 1958, the Government filed a motion before the Court of Tax Appeals for the execution of the judgment of the defunct Board of Tax Appeals, on the theory that the same had not been invalidated. The taxpayer again appealed to the Supreme Court, which ruled that the judgment of the Board of Tax Appeals was null and void, having been rendered without jurisdiction. Finally, in 1962 the Government instituted the present suit upon the bond. The lower court dismissed the complaint. In affirming the dismissal, the Supreme Court distinguished the present case from earlier cases upholding the right of the Government to proceed upon the bond:

> ". . . There was no question as to the taxpayer's liability to pay the tax. The amount thereof has been determined, the assessment already accepted by the taxpayer. The bonds were merely posted to guarantee the payment of the tax already due from and acknowledged by the principals. The obligation of the principals and sureties to pay the amount stated in the surety bonds was absolute and subject to no condition. Hence, the ruling of this court that the parties to the bond assumed an obligation separated and distinct from that to pay the tax itself which, in effect, was extinguished and substituted by the bond."

In the present case, however, the existence of taxpayer's liability for the war profits tax had never been admitted nor judi-

[48] Republic v. Zavier Gun Trading, G.R. No. 17325, April 26, 1962; Republic v. Dorego, G.R. No. 16594, April 26, 1962; Republic v. Araneta, G.R. No. 14142, May 30, 1961.

[49] Republic v. Planas, G.R. No. 21224, Sept. 27, 1966.

cially established. It is clear, therefore, that the condition of the bond was never fulfilled and the obligation assumed thereunder did not attach.

8. *Prescription*

In the *Conda* case,[50] the Supreme Court ruled that the periods for assessment and collection prescribed in the Tax Code are applicable to forest charges.

In this case, the high Court declined to expand further the exceptions to the statute of limitations prescribed in the Tax Code. After pointing out that there was no express or written waiver executed by the taxpayer and the taxpayer had not persuaded the Government to postpone collection through requests for reconsideration or reinvestigation, the Court upheld the defense of prescription raised by taxpayer. It was argued by the Government that since the taxpayer had made partial payment of the tax sought to be collected, this act should be taken as a waiver of the defense of prescription. But this argument was rejected by the Court:

> ". . . partial payment will not prevent the Government from suing the taxpayer. Because by such act of payment, the Government is not thereby persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harrassment or injustice is meant, which is the underlying reason behind the rule that prescriptive period is arrested by the taxpayer's request for re-examination or reinvestigation, even if he has not previously waived (prescription) in writing."

9. *Additions to tax*

Under the Tax Code, an additional fifty percent surcharge is imposed in the case of deficiency assessments based on fraud.[51] In the case of *Republic v. Lim Tian Teng Sons & Co., Inc.*,[52] the imposition of the fifty percent surcharge was sustained by the Supreme Court. Taxpayer, although on accrual basis, had willfully underdeclared its 1951 income by treating copra outturn worth almost ₱100,000.00 as stock still outstanding at the end of 1951, when in fact such copra had already been shipped to a foreign buyer and the taxpayer had already received part of the sales proceeds. Further compounding this willful underdeclaration, taxpayer included such copra outturn in its beginning inventory for 1952, thus eventually deducting its value as cost of goods sold for 1952 and disminishing its net income for that year.

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[50] *Supra*, see note 34.
[51] Tax Code, Sec. 72.
[52] *Supra*, see note 2.

In the same case, the Court ruled that the five percent surcharge under Section 51(e)(3) is mandatory and is automatically due once the tax is not paid on time.

> "This provision is mandatory. It provides a plan which works out automatically. It confers no discretion on the Collector of Internal Revenue. That official may not disregard the law and substitute therefor his own personal judgment."

In addition to surcharges, the Tax Code also authorizes the collection of interest on unpaid taxes. In the same *Lim Tian Teng Sons & Co., Inc.*, case,[53] the Court indicated the starting point for the accrual of interest. This is the day immediately following the last day for payment, as fixed by law or in the assessment notice. From such day, interest begins and continues to accrue until full payment of the tax.

10. *Fraud must be proved*

It is a well established rule that fraud is a question of fact[54] and the circumstances constituting fraud must be alleged and proved.[55] The finding of the Tax Court as to its existence is final unless clearly shown to be erroneous.[56] In *Commissioner v. Gonzales*,[57] the government sought to rebut the defense of prescription raised by the taxpayer within a claim of fraud. The Supreme Court noted however, that the commissioner in its letter to the taxpayer never charged nor refuted fraud. The assessment in question did not carry any surcharge for fraud. Even in the pleadings filed with the Tax Court, the commissioner never alleged fraud. The point of fraud was raised for the first time only in a memorandum filed with the Tax Court. Consequently, the Tax Court rejected the plea of fraud for lack of allegation and proof. This finding was sustained by the Supreme Court pursuant to the doctrine earlier noted. However, in *Republic v. Lim Tian Teng*,[58] the Court sustained the allegation of fraud for the reason that the basis of the record in the taxpayer inventory for 1952 was manifestly false.

VI. REMEDIES OF THE TAXPAYER

1. *In general*:

The taxpayer's remedies are well-known. Upon notice of a tax assessment, whether in the form of a demand for payment,

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[53] *Ibid.*
[54] Commissioner v. Gonzales, G.R. No. 19495, Nov. 24, 1966.
[55] Gutierrez v. Court of Tax Appeals, G.R. Nos. 9738 & 9771, May 31, 1957, 54 O.G. 2912 (May, 1958).
[56] Perez v. Court of Tax Appeals, G.R. No. 10507, May 30, 1958.
[57] G.R. No. 19495, Nov. 24, 1966.
[58] *Supra*, see note 2.

or collection through summary procedure, the taxpayer may dispute such assessment administratively. This may be done through a petition for reconsideration or reinvestigation. As already noted, the Bureau may impose conditions for granting such position. Usually, before any reinvestigation will be allowed, the taxpayer would be required to execute a written waiver of the statute of limitations, pursuant to General Circular No. V-258. Once the taxpayer complies with such condition, the assessment is deemed disputed. Such disputed assessment will then be reinvestigated.

Upon reinvestigation, the Commissioner may cancel or withdraw the assessment. He may also sustain the assessment in whole, or in part. In the latter case, a revised deficiency assessment will be issued, which again the taxpayer may dispute. As earlier noted, while the Commissioner is free to deal with the disputed assessment according to his best judgment, it is imperative that he should act thereon. His action usually takes the form of a decision or ruling on the petition of the taxpayer, which the latter may appeal to the Court of Tax Appeals.

2. *Appealable decision or ruling*

What particular action of the Commissioner is to be considered the appealable decision or ruling is a vexing question. From the cases, it would seem that communication from the Commissioner overruling taxpayer's request for reconsideration and affirming the disputed assessment in terms clearly indicating *finality* of the action taken, constitutes such appealable decision or ruling.

In the case of *Morales v. Collector of Internal Revenue*,[59] the Commissioner issued a deficiency assessment for estate and inheritance taxes against taxpayer on May 14, 1956. In October of that same year, the Commissioner reiterated the deficiency assessment and demanded payment. In that same month, taxpayer disputed the assessment on the ground of prescription. On December 28, 1956, the Commissioner rejected the claim of prescription and reiterated his demand for payment. A reminder was sent to taxpayer on March 26, 1958, with the warning that summary remedies would be availed for collection. In October, 1958, a warrant of distraint and levy was issued against taxpayer and his properties were seized. In November, 1958, taxpayer requested cancellation of the warrant of distraint and levy on the same ground of prescription. This was denied on December 5, 1958.

[59] G.R. No. 16759, March 31, 1966.

On December 8, 1958, or three days later, taxpayer filed a petition for review with the Court of Tax Appeals. By way of defense, the Commissioner contended that the appeal was filed out of time; accordingly, the Court had no jurisdiction to entertain the petition.

The central question was, which was the appealable decision of the Commissioner, the letter dated December 28, 1956 or the letter dated December 5, 1958? If the latter, then the petition filed on December 8, 1958 was timely; if not, the assessment had become final and executory.

In deciding on this issue, the Supreme Court indicated that the appealable decision is the first or earliest ruling made by the Commissioner on the *issue* on which appeal to the Court of Tax Appeals is taken. Since the petition for review raises the same issue of prescription resolved by the Commissioner adversely to the taxpayer in his letter of December 28, 1958, such letter is the appealable decision. Cited and invoked by taxpayer, the case of *St. Stephen's Association v. Collector of Internal Revenue*[60] was deemed inapplicable. In that case, as in the present case, the Commissioner had sent two letters at different dates denying the request for cancellation of the assessment and it was the *second* letter which the Court considered the appealable decision. But this was so because in such second letter, the Commissioner in express terms indicated that such second letter was the decision which taxpayer could appeal to the Court of Tax Appeals. In the present case, there was no such indication in the subsequent letter on December 5, 1958. Moreover, as pointed out by the Court, in the present case, the second letter dated December 5, 1958 did not deal with the disputed assessment, but merely dealt with the manner of the collection, which was not relevant to the issue of prescription sought to be reviewed before the Tax Court. Finally, the first letter, dated December 28, 1956 had the *tenor of finality.*

In *Republic v. Lim Tian Teng Sons & Co., Inc.*,[61] as earlier noted, the Court considered as the appealable decision of the Commissioner of Internal Revenue, the letter of the Solicitor General demanding payment of the disputed assessment. Apparently, this involved a somewhat loose interpretation of the law, which in express terms allows appeal from the "decision or ruling of the Commissioner of Internal Revenue." It is submitted that as the statutory provision affects the substantive rights of the taxpayer,

[60] G.R. No. 11238, August 21, 1958.
[61] *Supra,* see note 2.

particularly his right to have a judicial review of the Commissioner's ruling, there should be strict compliance with its terms. The Commissioner must make and issue his own decisions and rulings. The decisions and rulings of other Government officials, however, pertinent, should not be considered as his own, for purposes of recognizing the right of the taxpayer to judicial review.

In refund cases, of course, the rule is altogether different. The taxpayer need not wait for a decision or ruling on the claim for refund. The reason is that in refund cases, it is a mandatory requirement for the taxpayer to file an action in court to compel refund within two years from the date of payment.[62]

3. *Thirty-day period for appeal*

In computing the thirty-day period prescribed for review before the Tax Court, the starting point is not the date on which the assessment was issued. In *Commissioner v. Gonzales*,[63] it was held that counting should begin only from the date of receipt of the decision of the Commissioner on the disputed assessment

4. *Refund cases*

Generally, the person entitled to ask for a refund of a tax is the taxpayer who paid the same.[64] This rule applies, although the taxpayer may have actually shifted the tax burden by collecting the tax from its customers.

In the case of *Commissioner of Internal Revenue v. American Rubber Company*,[65] taxpayer was a producer of raw rubber. In selling raw rubber to its customers, it billed to and collected from them the sales tax which was thought to be due on its sales of rubber. In the sales invoices, the item for tax was billed separately from the price. Subsequently, taxpayer questioned the legality of the sales tax on its sales of rubber. As already discussed, taxpayer was upheld in its claim that as raw rubber constituted agricultural products, the sale thereof was exempt from the sales tax. But if the sales taxes already paid were illegal, may taxpayer claim refund thereof?

The Government contended that taxpayer could not claim refund precisely because it did not pay the tax. Only the persons who paid the tax, its customers, could claim refund. This stand

[62] Tax Code, Sec. 306.
[63] *Supra*, see note 52.
[64] Commissioner of Internal Revenue v. American Rubber Co., G.R. Nos. 19667, 19801-03, Nov. 29, 1966.
[65] *Ibid.*

was based on the earlier rulings of the Supreme Court in the *Medina*[66] and *Mendoza*[67] cases. In such cases, theater owners who paid illegal municipal taxes billed to and collected from theater goers were held not entitled to claim refund of such taxes. This right pertained to the theater patrons, who actually paid the tax.

In rejecting the contention of the Government, the Supreme Court distinguished the *Medina* and *Mendoza* cases from the case of the rubber company. The Court pointed out that in the cases relied upon by the Government, the taxes were municipal imposts, which were levied upon the theater goers, not from the theater owners. The latter merely collected the tax from the theater patrons as agents of the respective municipal treasurers. On the other hand, the sales tax is by law imposed directly, not on the thing sold, but on the act of sale by the producer or manufacturer, who is made exclusively liable for its payment. Therefore, as the person liable for the tax and who actually paid the tax is the Government, taxpayer corporation was entitled to claim refund for sales tax, although this was shifted to the customers.

> "The separate itemization of the sales tax in invoices was permitted to prevent the taxpayer from being compelled to pay a sales tax on the tax itself. It does seem neither just nor proper that a step suggested by the Internal Revenue authorities, themselves to protect the taxpayer from paying a double tax should now be used to block his action to recover taxes collected without legal sanction.
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> A mere important reason that militates against extensive and indiscriminate application of the Medina ruling is that it would tend to perpetuate illegal taxation, for the individual customers to whom the tax is ultimately shifted will ordinarily not care to sue for its recovery in view of the small amount paid by each and the high cost of litigation. Insofar as it favors imposition, collection and retention of illegal taxes, and encourages multiplicity of suits, the Tax Court ruling under appeal violates morals and public policy."

However, although the taxpayer could claim refund, the High Court indicated that its relation to the refunded taxes was that of trustee.

> "Once recovered, the plaintiff must hold the refunded taxes in trust for the individual purchases who advanced payment thereof, and whose names must appear on plaintiff's records.

The two-year prescriptive period for filing action for tax refund commences from the date of the payment of the tax. Where the tax is paid in installments, the two-year period must be

[66] 91 Phil. 854 (1952)
[67] G.R. No. 6069, April 30, 1954.

counted only from the date of the payment of the last installment.[68]

As a rule, a taxpayer entitled to a refund of a tax is not entitled to interest thereon. Such interest is allowed only in cases where the refunded tax was collected with patent arbitrariness.[69]

[68] Commissioner v. Palanca, G.R. No. 16626, Oct. 29, 1966.
[69] Commissioner of Internal Revenue v. American Rubber Co., *supra*, see note 64