TAXATION

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TAX ADMINISTRATION AND PROCEDURE

1. *Jurisdiction of the Court of Tax Appeals*

By way of *obiter dictum*, the Supreme Court in an earlier case[1] observed that pursuant to section 7 of Republic Act No. 1125, a taxpayer had 30 days from the date of an assessment notice "within which *to dispute* said assessment, *by appealing to the Court of Tax Appeals.*"[2]

In *Commissioner of Internal Revenue v. L. S. Villa and the Court of Tax Appeals*,[3] the Supreme Court was of a different view, holding that the assessment itself cannot be the subject of appeal to the Court of Tax Appeals. In this case, husband-wife taxpayers received on April 7, 1961, assessments for deficiency income taxes. Without contesting the assessments in the Bureau of Internal Revenue, the taxpayers filed on May 4, 1961, a petition for review in the Court of Tax Appeals. The latter court took cognizance of the appeal, tried the case on the merits and accordingly rendered judgment. On appeal to the Supreme Court, this Tribunal dismissed the case on the ground that the Court of Tax Appeals lacked jurisdiction over the subject matter. It pointed out that section 7 of Republic Act No. 1125 confers jurisdiction on the Court of Tax Appeals over "decisions" of the Commissioner of Internal Revenue in cases involving "disputed assessments." The word "decisions" of the Commissioner of Internal Revenue means his decision on the protest of the taxpayer against the assessment itself; definitely, the word does not signify the assessment itself. To the same effect is section 11 of the abovementioned law, which refers to "decisions" of the Commissioner of Internal Revenue as being appealable to the Court of Tax Appeals. Moreover, although the parties voluntarily submitted to the jurisdiction of the Tax Court and at no stage of the proceedings have they raised the issue of jurisdiction, the Supreme Court may, *motu proprio*, dismiss the proceedings, for it is the law and not the consent of the parties that confers jurisdiction to the court over the subject matter. Furthermore, the Tax Court is a court of special jurisdiction and as such can take cognizance only of such matters as are clearly within its jurisdiction.

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[1] Republic v. Magallona, G.R. No. 15802, September 30, 1960; See also, Republic v. Lim Tian Tang Sons & Co., G.R. No. 21731, March 31, 1966.

[2] Emphasis supplied.

[3] G.R. No. 23988, January 2, 1968.

In brief, therefore, the taxpayer must first contest administratively the assessment before he may appeal to the Court of Tax Appeals. Bearing in mind the ruling that the computation of the thirty-day period for appeal to the Tax Court must start not from the date on which the assessment was issued but from the date of receipt of the decision of the Commissioner on the disputed assessment, the question may well be asked whether the period of appeal to the Tax Court is thus not left to the taxpayer, who may for one reason or other defer his right to dispute an assessment made against him by the Bureau of Internal Revenue.

Pursuant to section 7 (2) of Republic Act No. 1125, the Court of Tax Appeals exercises exclusive appellate jurisdiction over decisions of the Commissioner of Customs in cases involving seizure, detention, or release of property subject to customs duties, fees or other money charges.

In *Cadiz v. Secretary of National Defense*,[4] representatives of the General Affairs Administration of the Department of National Defense, as duly authorized agents of the Bureau of Customs and pursuant to a warrant of seizure and detention issued by the Collector of Customs for the Port of Manila, seized a motor vehicle for non-payment of import duties. Plaintiff instituted in the Court of First Instance of Rizal an action for replevin upon the ground that she was the owner of the car. Sustaining the dismissal of the complaint by the lower court, the Supreme Court ruled that since the issue in the case is the validity of the warrant of seizure issued by the Collector of Customs for alleged violation of the Revised Tariff and Customs Code and of the National Internal Revenue Code, the determination of such issue is within the exclusive jurisdiction of the Court of Tax Appeals. The taxpayer's argument that section 7 of Republic Act No. 1125 is not applicable because there is no decision yet of the Commissioner which can be the subject of appeal to the Tax Court was disposed of by the Court by pointing out that such absence of a decision only shows that the taxpayer did not exhaust administrative remedies.[5]

The divestiture of Courts of First Instance, under Republic Act No. 1125, of jurisdiction over cases involving the legality of seizures of property for non-payment of duties or other violation of tariff and customs laws, was further upheld in *Papa v. Mago*.[6] Here, the Supreme Court enjoined the respondent judge of the Court of First Instance from ordering the release of imported goods to the owner for

[4] G.R. No. 25150, September 30, 1968.

[5] Citing Acting Collector of Customs v. Caluag, G.R. No. 23925, May 24, 1967; also, Acting Collector of Customs v. la Rama Steamship Co., G.R. No. 20676, February 26, 1965.

[6] G.R. No. 27360, February 28, 1968.

want of *jurisdiction* over the subject matter. There was such lack of jurisdiction despite the fact that the goods in question were released from the customs zone of the Port of Manila but intercepted and seized on board two trucks at the Agrifina Circle, Ermita, Manila, by duly authorized customs agents, and the fact that at the time of the institution of the action in the Court of First Instance (a petition for mandamus with preliminary injunction) by the owner of the goods, no warrant of seizure and detention of the goods for purposes of seizures and forfeiture proceedings had been issued by the Collector of Customs. The contention of the respondent owner that the goods were no longer under the control of the Bureau of Customs was brushed aside by the Supreme Court for the following reasons: (1) Since the records of the case show that the duties, taxes, and other charges upon the goods in question had not been paid in full, the importation thereof is not yet deemed to have been terminated and such goods still remain therefore subject to the jurisdiction of the Bureau of Customs. Importation is deemed terminated only upon the payment in full of the duties, taxes, and other charges upon the articles, or secured to be paid, at the port of entry and the legal permit for withdrawal shall have been granted. Furthermore, since the quantity of the goods was underdeclared presumably to avoid the payment of duties, the articles were subject to forfeiture under section 2530, paragraphs e and m (1), (3), (4) and (5) of the Tariff and Customs Code. Merchandise the importation of which is effected contrary to law is subject to forfeiture[7] and if released contrary to law, are likewise subject to seizure and forfeiture.[8] (2) It is the settled rule[9] that the Bureau of Customs acquires exclusive jurisdiction over imported goods, for purposes of enforcement of the customs laws, from the moment the goods are *actually* in its possession or control, even if no warrant of seizure or detention had previously been issued by the Collector of Customs in connection with seizure and forfeiture proceedings. Therefore, even if it be granted *arguendo* that after the goods in question had been withdrawn from the customs area, the Bureau of Customs had lost jurisdiction over the same, nevertheless, when said goods were intercepted by duly authorized customs agents at the Agrifina Circle, the Bureau of Customs had regained jurisdiction and custody of the goods. Section 1206 of the Tariff and Customs Code imposes upon the Collector of Customs the duty to hold possession of all imported articles upon which duties, taxes and other charges have not been paid or secured to be paid, and to dispose of the same according to law. Therefore, the goods in

[7] Pascual v. Commissioner of Customs, G.R. No. 10979, June 30, 1959; Capulong v. Aseron, G.R. No. 22989, May 14, 1966; Capulong v. Acting Commissioner of Customs, G.R. No. 22990, May 19, 1966; Lazaro v. Commissioner of Customs, G.R. No. 22511 & 22513, May 26, 1966.

[8] De Joya v. Lantin, G.R. No. 24037, April 27, 1967.

[9] Citing de Joya v. Lantin, *supra*.

question were under the custody and at the disposal of the Bureau of Customs at the time the petition for mandamus was filed in the Court of First Instance. Hence, the Court of First Instance could not exercise jurisdiction over said goods even if the warrant of seizure and detention of the goods had not been issued by the Collector of Customs.

Implicit in the foregoing decision is the indication that the proper recourse of the respondent owner of the goods would have been to pursue and exhaust administrative remedies before the Bureau of Customs and then appeal to the Court of Tax Appeals the adverse decision of the Commissioner of Customs.[10]

2. *Effect of failure to appeal to the Court of Tax Appeals*

Before the enactment of Republic Act No. 1125, the exclusive remedy of a taxpayer who assailed the validity of an assessment of any national internal revenue tax was, pursuant to section 306 of the Tax Code, to pay first the tax and then to file a written claim for refund with the Commissioner of Internal Revenue within two years after payment; with such claim for refund having been made, he may bring suit in the regular courts of justice to recover the taxes paid. With the approval of Republic Act No. 1125, the taxpayer was given a new remedy whereby he was given judicial recourse without need of first paying his tax liability: through a petition for the review in the Court of Tax Appeals of decisions of the Commissioner of Internal Revenue on disputed assessments. It has been stated that the taxpayer's remedy under this law is in addition to section 306 of the Tax Code in the sense that the specific provisions of Republic Act No. 1125 regarding appeal was intended to cope with the situation where the taxpayer, upon receipt of the decision or ruling of the Commissioner of Internal Revenue, elects to appeal to the Tax Court instead of paying the tax; on the other hand, section 306 contemplates of a case wherein the taxpayer paid the tax, whether under protest or not, and later on decides to go to court for its recovery.[11]

Does this mean that a taxpayer who failed to appeal to the Court of Tax Appeals and who thereafter paid under protest could then, relying on section 306, sue for recovery on the ground of its illegality? This was precisely the issue in the case of *Commissioner of Internal Revenue v. Concepcion.*[12] Respondents sought a refund of estate and inheritance taxes on fifty shares of stock of Edward J. Nell Company issued in the name spouses Mitchell-Roberts "as joint tenants with full rights

[10] See De Joya v. Lantin, *supra*, note 8; Acting Collector of Customs v. Caluag, *supra*, note 5.

[11] Johnston Lumber Co., Inc. v. Court of Tax Appeals, G.R. No. 9292, April 23, 1957, 53 O.G. 5226 (Aug., 1957), 101 Phil. 151 (1957); Collector of Internal Revenue v. Court of Tax Appeals and Herme Pipe & Asbestos Co., Inc., G.R. No. 11494, January 28, 1967, 61 O.G. 2329 (April, 1965).

[12] G.R. No. 23912, March 15, 1968.

of survivorship and not as tenants in common." Respondents maintain that there was no transmission of property since under English law, ownership of all property acquired during the marriage vests in the husband. The Commissioner of Internal Revenue insisted on the assessment on the ground that there was a transmission of one-half of the shares to the husband upon the death of the wife, said shares being conjugal property. When the respondents appealed the decision of the Commissioner to the Court of Tax Appeals, the Court ruled that the appeal was filed beyond the reglamentary period of thirty days. This ruling of the Tax Court became final. The respondents then paid the taxes in question and sought recovery thereof under section 306. The Commissioner set up the defense that the respondents were estopped from denying the legality and correctness of the assessment in view of the fact that they paid the same in pursuance of a decision of the Commissioner which had become final, executory and demandable, as a result of their failure to appeal on time said decision. Sustaining the Commissioner's defense, the Supreme Court stated that the procedure set forth in section 306 is not available to revive the right to contest the validity of an assessment once the same had been irretrievably lost not only by failure to appeal but likewise by the lapse of the reglamentary period within which the appeal could have been taken.

The foregoing decision reinforces the rule that when a taxpayer fails to appeal to the Court of Tax Appeals in due time, the assessment in question becomes final, executory and demandable and the taxpayer is thereafter barred, in an action for collection of the tax brought by the Government, from disputing the correctness of the assessment or invoking any defense that would re-open the question of his tax liability on the merits. The reason is that, otherwise, the period of thirty days for appeal to the Tax Court would make little sense.[13] However, in *Republic v. General Sales Supply Co., Inc.*[14] in spite of the fact that the taxpayer did not appeal the disputed assessment to the Court of Tax Appeals, the Supreme Court, in the action for the collection of the tax, entertained as an issue the defense of prescription raised by the taxpayer against the assessment and enforcement of his tax liability. The Court passed *sub-silentio* on the point that the assessment, having become final and executory because of the failure to appeal to the Tax Court, is no longer vulnerable to an attack on its merits, including that of prescription.[15]

[13] Republic v. Lim Tian Sons & Co., *supra*, note 1.

[14] G.R. No. 18543, October 21, 1968.

[15] Note, however, ruling in Republic v. Ker & Co. (G.R. No. 21609, September 29, 1966; 64 O.G. 3761 [April, 1968]) to the effect that while no defense which goes into the merits of a final and executory assessment may be entertained, the Government's failure to question taxpayer's right to raise the defense of prescription will result in a waiver of the finality of the assessment.

3. *Prescription*

(a) Assessment and collection

The prescriptive periods for the assessment and collection of internal revenue taxes are found in sections 331 and 332 of the Tax Code. In case a return was filed and the same was not false or fraudulent, the prescriptive period for the assessment of the tax and for the judicial action for collection of the tax without assessment is five years after the return was filed, pursuant to section 331. In case of a false or fraudulent return or where no return has been filed, the assessment of the tax must be made and the judicial action for collection without an assessment filed within ten years from the discovery of the fraud, falsity or omission, as provided in section 332(a).

In *Republic v. General Sales Supply Co., Inc.*,[16] the income tax returns filed by the defendant company for the years 1946 to 1949, were considered false and fraudulent because an investigation of the firm's records and books showed that the purchases and expenses reported in the returns were padded so that said returns did not correctly state the taxes due the Government in the total sum of ₱108,557.90 (later reduced to ₱79,379.69) including a 5% surcharge. The prescriptive period applicable with respect to the action for the collection of the taxes is ten years to be counted starting from the date of the discovery of the fraud or falsity. In this case, such starting date was February 3, 1951, when the internal revenue examiner who investigated the income tax returns of the defendant firm filed his report on his investigation.

Section 332(a) of the Tax Code likewise applies where no tax return is filed, whether such return is required by law or not, as held in *Tan Guan v. Nable.*[17] The taxes involved in this case — specific taxes on the quantity of cigarettes that can be manufactured on 1,160 bobbins of cigarette paper assessable pursuant to section 150 of the Tax Code and section 10 of Revenue Regulations No. V-7, dated October 31, 1950 — was still judicially collectible since the civil action for that purpose was commenced long before the expiration of the prescriptive period of ten years.

When a taxpayer believed in good faith that he had no tax liability and did not file a return, the Supreme Court in *Commissioner of Internal Revenue v. Visayan Electrical Co.*,[18] ruled that such tax liability also prescribes in accordance with section 332(a) of the Tax Code.

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[16] *Supra*, note 14.

[17] G.R. No. 18598, July 23, 1968. The Court reiterated the ruling in Bisaya Land Transportation Co. v. Collector of Internal Revenue and Collector of Internal Revenue v. Bisaya Land Transportation Co., G.R. Nos. 12100 & 11812, May 29, 1959.

[18] G.R. No. 22611, May 27, 1968.

Section 332(c) of the Tax Code provides for the prescriptive period for the enforcement of an internal revenue tax liability, both by distraint or levy and a judicial action, after an assessment has been issued and sent to the taxpayer in accordance with sections 331 or 332(a) of said Code. Under section 332(c), if an assessment had been duly made, the government must collect the tax either by distraint or levy or by a proceeding in court (1) within 5 years from the date of the assessment, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner of Internal Revenue and the taxpayer before the expiration of such five-year period.

In *Republic v. Acebedo,*[19] the Supreme Court ruled that a mere request for reinvestigation or reconsideration of the tax assessment does not suspend the running of the prescriptive period for collection. It observed that this ruling is logical, otherwise there would be no point to the legal requirement that any extension of the original period be agreed upon in writing. The Court distinguished the present case from *Collector of Internal Revenue v. Suyoc Consolidated Mining Co.,*[20] where the Supreme Court conceded that "there are cases, however, 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." In the case under consideration, the Court said that

> ". . . the defendant, after receiving the assessment notice of September 24, 1949, asked for reinvestigation thereof on October 11, 1949, which was repeated in 1951. These requests remained unheeded until October 4, 1955, when the Collector of Internal Revenue bestirred himself for the first time in connection with such requests. Up to October 4, 1955, the delay in collection could not be attributed to the defendant at all, and there was nothing to impede the enforcement of the tax liability by any of the means provided by law. By that date, more than five years had elapsed since the assessment in question was made, and hence prescription had already set in, making subsequent events in connection with the said assessment entirely immaterial. Even the written waiver of the statute signed by the defendant on December 17, 1959 could no longer revive the right of action, for under the law such waiver must be executed within the original five-year period within which suit could be commenced."

However, in *Alca v. Court of Tax Appeals,*[21] the Supreme Court considered the written waiver executed by the taxpayer as valid and

[19] G.R. No. 20477, March 29, 1968.
[20] G.R. No. 11527, November 25, 1958, 56 O.G. 1393 (Feb., 1960).
[21] G.R. No. 24624, November 27, 1968.

effective, although done beyond the original five-year period of prescription. In this case, the Commissioner of Internal Revenue assessed the petitioner for specific tax on the rubbing alcohol produced in and removed from petitioner's factory between June 6, 1953 and August 24, 1960. The taxpayer raised the defense of prescription, alleging that the applicable prescriptive period is that provided in section 331 of the Tax Code. No return for purposes of paying the specific taxes was filed but taxpayer insisted that the transcript sheets submitted to the treasurer of the province where the factory was located, should be construed as returns.[22] She also contended that the document she signed on December 9, 1959, whereby she waived the running of the prescriptive period "beginning January 20, 1956 . . . but not after December 31, 1966," is without effect. Finding no merit in the taxpayer's contentions, the Supreme Court stated that even assuming to be correct her pretense that the transcript sheets furnish sufficient data upon which the assessment of specific tax may be based, the assessment in question would still be valid. For while it is true that the demand for payment of the specific tax accruing from June 6, 1953 to August 24, 1960 was only made on September 12, 1960, and therefore, as far as the taxes due from June 6, 1953 to September 11, 1955 are concerned, the demand therefor had been made beyond the required five-year period, taxpayer's waiver of December 9, 1959, made timely the assessment of taxes due for the entire period. The argument of the taxpayer that for a written agreement extending the prescriptive period to be valid, it is necessary that the same be made before the period to be extended has expired, is untenable because the rule does not apply in this case. It may be noted, said the Court, that the taxpayer waived the running of the prescriptive period beginning January 20, 1956. It is not just an extension, therefore, of the period of limitation, but a renunciation of her right to invoke the defense of prescription which was then already available to her. There is nothing unlawful nor immoral, the Court added, about this kind of waiver; just like any other right, the defense of prescription is waivable.

(b) Refund of taxes —

The prescriptive periods for refund or tax credit of internal revenue taxes are found in sections 306 and 309 of the Tax Code. The following two requirements prescribed by these provisions are mandatory and non-compliance therewith would be fatal to the claim: (1) filing of a written claim for refund with the Commissioner of Internal Rev-

[22] Submitted on BIR Form 2.41, these sheets indicate the kind and quantity (in term of gallon liter and proof liter) of the articles produced or manufactured from the new materials (spirits) delivered to the factory in a given period.

enue; and (2) institution of a suit or proceeding in court within two years from the date of payment.[23]

Aside from reiterating the above rule, the Supreme Court in *Cebu Portland Cement Company v. Collector of Internal Revenue*,[24] ruled that there is no waiver of the defense of prescription on the part of the Government in an action for recovery of taxes by failure of the Commissioner to raise it in his original answer if in his answer to the amended petition for review such a defense was incorporated. The said answer to the amended petition for review supersedes the prior answers of the Commissioner to the original petition.

By its terms, section 306 refers to the recovery of any tax alleged "to have been *erroneously or illegally* assessed or collected"; any penalty "collected *without authority*"; or any sum "wrongfully collected." Not surprisingly, therefore, the Supreme Court, in an earlier case,[25] held that in a situation where the taxes (advance sales tax), at the time of their assessment and collection, were legitimately due and were not erroneously or illegally collected, but by reason of supervening circumstances (re-exportation of the taxable raw materials) such taxes paid became refundable, the law applicable to the action for recovery is section 11 of Republic Act No. 1125 and not section 306 of the Tax Code. Said section 11 provides for an appeal to the Tax Court within thirty days after receipt of the adverse decision or ruling of the Commissioner of Internal Revenue; whereas, section 306 requires, as above adverted to, the institution of a judicial suit within two years from the date of payment of the taxes in question, a claim for refund for the taxes having been previously made with the Commissioner. However, in a 1967 decision,[26] the Supreme Court modified its foregoing ruling, by holding that regardless of the conditions under which payment of the taxes were made, section 306 nonetheless applies. The Supreme Court said that sections 306 and 309 of the Tax Code were intended to govern *all kinds* of refunds of internal revenue taxes collected pursuant to the provisions of the Tax Code. When the tax sought to be refunded is illegally or erroneously collected, the period of prescription of two years starts from the date the tax was paid; but when the tax was legally collected, the prescriptive period commences to run from the date of occurrence of the supervening cause which gave rise to the right of refund.

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[23] Johnston Lumber Co., Inc. v. Court of Tax Appeals, 101 Phil. 151 (1957); Guagua Electric Light Plant Co., Inc. v. Collector of Internal Revenue, G.R. No. 14421, April 29, 1961, 59 O.G. 4207 (April, 1963).

[24] G.R. No. 20563, October 29, 1968.

[25] Muller & Phipps (Manila), Ltd. v. The Collector of Internal Revenue, 103 Phil. 145 (1958).

[26] Commissioner of Internal Revenue v. Insular Lumber Co. and Court of Tax Appeals, G.R. No. 24221, Dec. 11, 1967.

Commissioner of Internal Revenue v. Victorias Milling Co.,[26a] reiterates the foregoing doctrine in the Insular Lumber Company case. By authority of section 142 of the Tax Code, Victorias Milling Company sought the refund of 50% of the specific taxes paid by it on the manufactured oils and fuels used in its agricultural operation for the period from June 18, 1952 to June 18, 1957. It was ruled that the claim for refund of specific taxes with respect to which no judicial proceeding had been commenced within two years from the date of the last month in which the oils and fuels were used, had already prescribed.

4. *Seizure and forfeiture proceedings (re customs duties and imposts)*

(a) Nature of proceedings

In *Vierneza v. The Commissioner of Customs*,[27] the Collector of Customs of Cebu instituted seizure and forfeiture proceedings against 760 cartons of cigarettes with blue seals but without the required internal revenue strip stamps, which were discovered on board a coastwise vessel docked at the port of Cebu, having come from Jolo on its way to Manila. Assailing the proceedings, petitioner Vierneza argued that the forfeiture was not in accordance with section 2531 of the Tariff Code[28] inasmuch as she purchased the goods in the open market of Jolo. Rejecting petitioner's argument, the Supreme Court ruled that since the importation was seized and forfeited at the port of Cebu which is within the jurisdiction of the Bureau of Customs and the evidence shows that petitioner had concealed, bought and transported such cigarettes with knowledge that they were imported contrary to law, the forfeiture was effected precisely in accordance with section 2531. Besides, the Court added, "it is settled jurisprudence that forfeiture proceedings are in the nature of proceedings *in rem* wherein the jurisdiction to proceed against the *res* is vested in the court of the district where the same is found or seized.... Therefore, the Collector of Customs of Cebu, who has the authority under the Tariff and Customs Code to institute forfeiture proceedings, lawfully assumed jurisdiction to forfeit, in favor of the Government, the smuggled cigarettes found and seized within his collection district." As held in a previous case, the "fact that petitioner is merely a buyer of the cigarettes in the open market of Jolo does not render the cigarettes immune

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[26a] G.R. No. !24108, January 3, 1968.

[27] G.R. No. 24348, July 30, 1968.

[28] Section 2531 provides that the forfeiture shall be effected when and while the article is in the custody or within the jurisdiction of the customs authorities or in the hands or subject to the control of some person who shall receive, conceal, buy, sell or transport the same with knowledge that the article was imported contrary to law."

from the penalty of forfeiture. This is so because forfeiture proceedings are instituted against the *res* (cigarettes)...."[29]

(b) Jurisdiction —

In the *Vierneza* case, the petitioner also argued that the Collector of Customs of Jolo is exclusively authorized to proceed against the cigarettes in question inasmuch as the smuggling was allegedly perpetrated in his collection district; hence, the seizure and forfeiture thereof by the Collector of Customs of Cebu is irregular and illegal for lack of jurisdiction. Not so, said the Supreme Court. "It is of no moment where the introduction of the property subject to forfeiture took place." It is "the right of an officer of the customs to seize goods which are suspected to have been introduced into the country in violation of the laws not only in his own district, but also in any other district than his own."[30] The construction of the Code proposed by the petitioner would virtually place the Collector of Customs in a straitjacket and render useless his police power of search and seizure,[31] thereby frustrating effective enforcement of the measures provided in the Code to prevent and suppress smuggling and other frauds upon the Customs.[32] The Code, as a revenue law, is to be so construed as to most effectually accomplish its objects.

In *Papa v. Mago*,[33] already mentioned above, the Supreme Court held that it is the settled rule that the Bureau of Customs acquires exclusive jurisdiction over imported goods, for purposes of enforcement of the Customs laws, from the moment the goods are actually in its possession or control, even if no warrant of seizure or detention had previously been issued by the Collector of Customs in connection with seizure and forfeiture proceedings.

An interesting and apparently novel legal question was involved in *Illuh Asaali v. The Commissioner of Customs*.[34] Is it within the jurisdiction of the Bureau of Customs to institute seizure and forfeiture proceedings over sailing vessels with their cargo of blue seal cigarettes and rattan chairs, when said vessels were apprehended and seized on the high seas, beyond the territorial waters of the Philippines and have not touched any place or port in the Philippines? The Supreme Court answered the question in the affirmative, for the following reasons: *Firstly*, it felt itself bound to accept the finding of the Court of Tax Appeals that these vessels, laden with cigarettes

[29] Gigare v. Commissioner of Customs, G.R. No. 21376, August 29, 1966.
[30] Citing Taylor v. U.S., 44 U.S. (3 How.) 197, 11 L.Ed. 559 (1845).
[31] See section 2205 of the TARIFF AND CUSTOMS CODE.
[32] See sections 602(b) and 603 of the TARIFF AND CUSTOMS CODE.
[33] See note 6, *supra*.
[34] G.R. No. 24170, December 16, 1968.

without the proper import license or permit, "announced loudly their intention not merely to skirt along the territorial boundary of the Philippines but to come within our limits and land somewhere in Tawi-Tawi towards which their prows were pointed. As a matter of fact, they were about to cross our aquatic boundary but for the intervention of a customs patrol which, from all appearances, was more than eager to accomplish its mission." The High Tribunal then gave its imprimatur to the Tax Court's conclusion: "To entertain even for a moment the thought that these vessels were probably not bound for a Philippine port would be too much a concession even for a simpleton or a perennial optimist. It is quite irrational for Filipino sailors manning five Philippine vessels to sneak out of the Philippines and go to British North Borneo, and come a long way back laden with highly taxable goods only to turn about upon reaching the brink of our territorial waters and head for another foreign port."

Secondly, the Supreme Court found that the seizure and forfeiture is justified by the law. Said the ponente:

> "It is unquestioned that all vessels seized are of Philippine registry. The Revised Penal Code leaves no doubt as to its applicability and enforceability not only within the Philippines, its interior waters and maritime zone, but also outside of its jurisdiction against those committing offense while on a Philippine ship (Article 2 of the Revised Penal Code.... The principle of law that sustains the validity of such a provision equally supplies a firm foundation for the seizure of the five sailing vessels found thereafter to have violated the applicable provisions of the Revised Administrative Code (Section 1363 (a) and (f).)
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> "Moreover, it is a well settled doctrine of International law that goes back to Chief Justice Marshall's opinion in *Church v. Hubbart* (2 Cranch 187, 234), an 1804 decision, that a state has the right to protect itself and its revenues, a right not limited to its own territory but extending to the high seas. In the language of Chief Justice Marshall: 'The authority of a nation within its own territory is absolute and exclusive. The seizure of a vessel within the range of its cannon by a foreign force is an invasion of that territory, and is a hostile act which it is its duty to repel. But its power to secure itself from injury may certainly be exercised beyond the limits of its territory.'"

(c) Due process —

Just as in any other governmental action divesting title to property from the owner and transferring the same to the Government as a consequence of violation of law, the requisites of procedural due process should be observed in forfeiture proceedings.

In *Papa v. Mago,*[35] one of the issues raised was whether members of the Manila Police Department, acting under orders of the Chief

[35] See note 6, *supra.*

of Police who had been formally deputized by the Commissioner of Customs, may intercept and seize two trucks and their cargo of imported goods in one of the streets of the city, without search warrant. Sustaining the validity of the seizure, the Supreme Court held that the Tariff Code does not require a search warrant in the present case. It is significant, the Court pointed out, that while the Code empowers entry and search of a *dwelling house* only upon warrant issued by the court,[36] it does not mention any such requirement in other cases of entry and search which it authorizes, such as that of any land, building (not a dwelling house), truck, aircraft, vessel, beast or person suspected of holding or conveying any dutiable or prohibited article introduced into the Philippines contrary to law.[37]

That the search and seizure of the particular type under consideration, the Court went on to say, is free from any constitutional infirmity is supported by American decisions. The latter have upheld the theory that the guarantee of freedom from unreasonable searches and seizures recognizes a necessary difference between a search of a dwelling house and a search of ship or automobile for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.[38] The justification for such differentiation was expressed in the following language:

> "Only 'unreasonable' search and seizure is forbidden... The question whether a seizure or a search is unreasonable in the language of the Constitution is a judicial and not a legislative question; but in determining whether a seizure is or is not reasonable, all of the circumstances under which it is made must be looked to.
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> "The automobile is a swift and powerful vehicle of recent development which has multiplied by quantity production and taken possession of our highways in batallions... While a possession in the sense of private ownership, they are but a vehicle constructed for travel and transportation on highways. Their active use is not in homes or on private premises, the privacy of which the law especially guards from search and seizure without process. The baffling extent to which they are successfully utilized to facilitate commission of crime of all degrees, is a matter of common knowledge. Upon that problem a condition, and not a theory, confronts proper administration of our criminal laws. Whether search of and seizure from an automobile upon a highway or other public place without a search warrant is unreasonable is in its final analysis to be determined as a judicial question in view of all the circumstances under which it is made."[39]

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[36] Section 2209.

[37] See secs. 2203, 2208, 2210 and 2211.

[38] 47 AM. JUR. pp. 514-518, citing Carroll v. U.S., 267 U.S. 132, 69 L. Ed. 543, 45 S.Ct. 280 (1925); 39 ALR 790; People v. Case, 320 Mich. 379, 190 N.W. 389 (1922); 27 ALR 686.

[39] People v. Case, *supra*, note 38.

In *Vierneza v. The Commissioner of Customs,*[40] the petitioner contended, *inter alia,* that the decision of the Commissioner libeling and forfeiting the cigarettes involved in the case for violation of section 2530 (m-i) of the Tariff Code is unconstitutional, in view of the fact that she was allegedly not afforded an opportunity to defend the cigarettes against such charge, said section not being one of the original grounds cited by the Commissioner in forfeiting the same. Repudiating the contention, the Supreme Court explained that the appellate power of the Commissioner of Customs to review seizure and protest cases is not limited to a review of the issues raised on appeal. He may affirm, modify or reverse the decision of the Collector of Customs on other questions provided that his findings and conclusions are supported by evidence. It is of no consequence whatsoever what were the original grounds of the seizure and forfeiture if in point of fact, the goods are by law subject to forfeiture. As there is evidence on record showing that the cigarettes in question were imported and introduced into the country without passing through a customs house, the same may be forfeited under section 2530 (m-1) of the Code, notwithstanding that it is not one of the original charges. As held in *Que Po Lay v. Central Bank,*[41] what counts is not the designation of the particular section of the law that had been violated but the description of the violation in the seizure report.[42]

In *C. F. Sharp & Company, Inc. v. Commissioner of Customs,*[43] it was held that there is no violation of due process if the Commissioner of Customs rendered his decision declaring the forfeiture of an unlawful importation without any formal hearing, for section 2313 of the Tariff Code does not require the Commissioner to hold a formal hearing. His duty is to approve, modify or reverse the decision of the Collector on the basis of the records, papers and evidence presented before the latter. Moreover, the proceedings had before the Court of Tax Appeals was a trial *de novo* and if petitioner desired to present evidence in addition to those already presented before the Collector, it could have done so.

(d) Burden of proof —

In the same case of *C. F. Sharp & Company, Inc.,* the Supreme Court also held that, it being undisputed that the vessel in question was apprehended while it was passing through the breakwater of Manila carrying untaxed cigarettes of foreign origin without the necessary papers

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[40] *Supra,* note 27.
[41] 104 Phil. 853 (1958).
[42] Same ruling in Illuh Asaali v. Commissioner, *supra,* note 34.
[43] G.R. No. 23803, February 26, 1968.

showing that they were entered lawfully through a port of entry and there being no question that the said cigarettes were liable to forfeiture pursuant to the Tariff and Customs Code, the conclusion is inevitable that the vessel was used in connection with the unlawful importation of said cigarettes. The burden was, therefore, shifted to the boat's owner to show that the carriage was lawful. No such showing was made. Hence, the Tax Court committed no error in ordering the forfeiture of the launch in question. It would be absurd to require the Government to prove that a vessel was engaged in smuggling, after it has already been caught *in flagrante delicto,* that is, loaded with smuggled goods.

(e) Consignee's good faith —

Under section 1363, paragraphs (m) -3, -4, and -5 of the Revised Administrative Code,[44] imported or exported merchandise becomes subject to forfeiture by: (1) the *wrongful* making by the owner, importer, exporter or consignee of any *false* declaration or affidavit, or the *wrongful* making or delivery by the same persons of any *false* invoice, letter or paper — all in connection with the importation or exportation of merchandise, or (2) by any *fraud* on the part of the importer, exporter or consignee to evade the payment of the duties due.

In *Farm Implement & Machinery Co. v. Commissioner of Customs,*[45] the litigation centered on the issues whether the zinc oxide dry pigment imported by the petitioner were duty-free and if not, whether they were subject to forfeiture. The merchandise was imported as "United States articles" free of customs duty under the provisions of section 311 of the Bell Trade Act. The Supreme Court ruled that the importation was not free from customs duties[46] but it was free, notwithstanding, from forfeiture. The reason why forfeiture will not lie, according to the Court, is that there is no evidence that the consignee committed any falsity or fraud in connection with the importation. Since forfeitures are not favored in law and equity, fraud is never presumed but must be proved. The consignee cannot be charged with a wrongful making of the import entry because in preparing it the consignee merely restated faithfully the data found in the corresponding consular invoice and bill of lading which were prepared by the suppliers abroad. If any, the wrongful making or falsity of the consular invoice or bill of lading could only be laid at the door of the foreign suppliers or shippers but they are not the very persons enumerated in subparagraphs (3) and (4). Moreover, there is no evidence that the consignee delivered the importation papers to the customs

[44] Now section 2530 of the TARIFF AND CUSTOMS CODE.
[45] G.R. No. 22212, August 30, 1968.
[46] For the discussion of this aspect of the case, see *infra* note 68.

authorities with knowledge of any falsity thereof. As regards subparagraph m-5, there was no fraud on the part of the consignee; in fact, the latter was in good faith. There is no evidence that the consignee actually knew beforehand that the goods in question did not constitute United States articles importable duty-free. The supplier's certificate of origin of the goods may have been incompetent evidence insofar as the determination of such goods as duty-free was concerned, but there was nothing to show that the certificate was false either. Consignee's reliance on that certificate of origin was a mistake in law which does not negative good faith.

5. *Property party to seek refund of sales tax*

In *Cebu Portland Cement Company v. Collector of Internal Revenue,*[47] it was held that the proper party to seek refund of sales taxes paid pursuant to section 186 of the Tax Code, is the manufacturer or producer, and not the customers, although said sales taxes may have been billed, charged, and paid for by such customers. The reason is that this kind of tax is imposed upon the manufacturer or producer and not on the customers.

6. *Compromise penalty*

In *Commissioner of Internal Revenue v. Abad,*[48] the rule was reiterated[49] that payment of a so-called "compromise penalty" cannot be demanded by the Commissioner inasmuch as it was offered only by way of compromise and the compromise did not go through. A compromise implies agreement. One party cannot impose it upon the other. If an offer of compromise is rejected by the taxpayer, as in this case, the Commissioner of Internal Revenue should file a criminal action if he believes that the taxpayer is criminally liable for violation of the tax law as the only way to enforce a penalty. A penalty can be imposed only on a finding of criminal liability.

NATIONAL TAXATION

A. INTERNAL REVENUE

1. *Income taxes*

(a) Capital gains —

Real property is a capital asset in the hands of a taxpayer who is not engaged in the business or trade of selling such property; but

[47] G.R. No. 20563, October 29, 1968.
[48] G.R. No. 19627. June 27, 1968.
[49] See Collector of Internal Revenue v. Pio Barretto Sons, Inc., G.R. No. 11805, May 31, 1960, 58 O.G. 4952 (July, 1962).

when the taxpayer is engaged in that business, the real property sold in connection therewith is an ordinary asset and the profit derived from such sale is an ordinary gain which is taxable in full regardless of the holding period for the property.

In *Roxas v. Court of Tax Appeals*,[50] the petitioners formed a partnership — *Roxas y Compania* — for the purpose of managing certain properties they inherited, which included agricultural land with a total area of 19,000 hectares. The Government, in consonance with the constitutional mandate to acquire landed estates to be sold to the tenants, persuaded the heirs to sell 13,500 hectares to the Government for distribution to the actual occupants thereof. Since the Government, however, did not have the funds to cover the purchase price, a special arrangement was made, whereby the Rehabilitation Finance Corporation would advance to Roxas y Cia. part of the purchase price as a loan. Collateral for such loan were the lands proposed to be sold to the farmers. Under the arrangement, Roxas y Cia. allowed the farmers to buy the lands for the same price but by installment, and contracted with the Rehabilitation Finance Corporation to pay its loan from the proceeds of the yearly amortizations paid by the farmers. Roxas y Cia. reported for income tax purpose fifty percent of its gain derived from the installment payments for the years 1953 and 1954, as gain from the sale of a capital asset held for more than one year. On the other hand, the Commissioner was of the opinion that Roxas y Cia. was engaged in the business of real estate for the reason that it subdivided its farm lands and sold them to the farmers on installment, and in addition, one of the purposes of the partnership as indicated in its articles was to sell, rent or otherwise deal with real property. Roxas y Cia., being a real estate dealer, the Commissioner concluded, the gains in question were taxable in full as ordinary gains.

The Supreme Court, in sustaining the taxpayer, held that notwithstanding the articles of incorporation, the fact that there were hundreds of vendees and that they paid their holdings in installments for a period of ten years, the peculiar circumstances of this isolated transaction did not make Roxas y Cia. a real estate dealer. The sale of the farm lands to the farmers was in obedience to the request and policy of the Government to give land to the landless. It was the duty of the Government to pay the agreed compensation but it did not have the funds to do so. Obligingly, Roxas y Cia. shouldered the Government's burden, went out of its way and sold the lands directly to the farmers in the same way and under the same terms as would have been the case had the Government done it itself. The Court concluded that "it does not conform to our sense of justice in the instant case for the

[50] G.R. No. 25043, April 26, 1968.

Government to persuade the taxpayer to lend it a helping hand and later on to penalize him for duly answering the urgent call."

(b) Partnership subject to corporate tax —

For purposes of the income tax on corporation imposed by the National Internal Revenue Code, the term "corporations" refer to those organized in, or existing under Philippine laws, no matter how created or organized,[51] and includes partnerships no matter how created or organized but not including duly registered general co-partnerships.[52]

In *Reyes v. Commissioner of Internal Revenue,*[53] the issue was whether there was a partnership subject to the corporate income tax under the following circumstances. Petitioners, father and son, purchased a lot and building, known as the Gibbs Building, for a certain price. The initial payment was shared equally by the petitioners. At the time of the purchase, the building was leased to various tenants, whose rights under the lease contracts were respected. The administration of the building was entrusted to an administrator who collected the rents; kept its books and records and rendered statements of accounts to the owners; negotiated leases; made necessary repairs and disbursed payments, whenever necessary, after approval by the owners; and performed such other functions necessary for the conservation and preservation of the property. Petitioners divided equally the income derived from the building after deducting the expenses of operation and maintenance.

The Supreme Court ruled that the petitioners were partners for purposes of the corporate tax, and not merely co-owners. Under the Tax Code, the corporate income tax is imposed on organizations which are not necessarily partnerships in the technical sense of the term. The law clearly indicates that a joint venture need not be undertaken in any of the standard forms, or in conformity with the usual requirements of the law on partnerships, in order that one could be deemed constituted for purposes of the tax on corporations.[54] Although some differentiation may be made between the facts of *Evangelista v. Collector of Internal Revenue*[55] and the present case, the Court stated, such differences do not suffice to avoid the controlling force of the former decision. The fact that here there was only one transaction and that petitioners indicated that their intention in purchasing the property was to house in one building their respective enterprises,

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[51] TAX CODE, sec. 24.
[52] *Id.*, sec. 84(b).
[53] G.R. Nos. 24020-21, July 29, 1968.
[54] Citing Evangelista v. Collector of Internal Revenue, 102 Phil. 140 (1957).
[55] *Supra,* note 54.

coupled with a plan of effecting a division in ten years (although no such division was effected 15 years later) — are differences of such slight significance as not to call for a different ruling.

(c) **Employees pension plan** —

Under section 56(b) of the Tax Code, the income tax shall not apply to employee's trust which forms part of a pension, stock bonus or profit-sharing plan of an employer for the benefit of some or all of his employees (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument no part of the corpus or income is divertible to purposes other than for the exclusive benefit of his employees.

In *Commissioner of Internal Revenue v. Visayan Electric Company*,[56] the board of directors of respondent company established a pension fund for the benefit of its "present and future" employees, in the event of retirement, accident or disability. Every month thereafter an amount was set aside for this purpose from the gross operating receipts of the company. This reserve fund was later invested by the company in stocks of San Miguel Brewery, Inc., for which dividends have been regularly received. Are the dividends taxable as income?

The Supreme Court ruled, first, that said dividends were not exempt from the tax under section 56(b) of the Tax Code because to be so exempt it is not enough that an employee's trust was created. It is necessary to show that the requirements of section 56(b) had been complied with. The admission made on respondent's brief that the "strict requirements of section 56(b) . . . had not been strictly complied with," and the additional fact that nothing in the record of the case showed that the pension plan was actuarially sound, made the dividends in question taxable. Secondly, the Court ruled that the dividends were subject to the tax rates for individuals as trust income and not, as argued by the Commissioner, to the rates for corporations as company income. The disputed income did not belong to the company; they did not go to its general fund. They were dividends from stock investment which formed part of and were added to the reserve pension fund which was solely for the benefit of the employees, to be distributed among the employees, as provided by the terms of the resolution of the board of directors. The intention to establish a trust in favor of the employees was clear. A valid express and irrevocable trust was created. For tax purposes, the employees' reserve fund was

[56] G.R. No. 22611, May 27, 1968.

a separate taxable entity. Respondent company then, while retaining legal title and custody over the property, held it in trust for the beneficiaries mentioned in the resolution creating the trust. The law applicable, therefore, to the case, was the provision of section 56(a) which directs that the "taxes imposed by this Title upon *individuals* shall apply to the income . . . of any kind of property held in trust." Neither was the exemption granted by the company's legislative franchise from "all taxes of any kind" applicable. What the franchise exempted the company from taxes was "*its* receipts, revenues, and profits." Plain import of the word "its", taken in context, is that the receipts, revenues, and profits, which could be tax exempt under the statute, must be the company's — not somebody else's. And as explained above, these did not belong to the company.

(d) Dividend exclusion under section 24(a) —

Prior to the amendment of section 24 of the Tax Code in 1957 by Republic Act No. 1855, there was no question that the proviso on dividend exclusion[57] applied to all domestic and resident foreign life insurance companies. By virtue of said amendment, however, the original provisions of section 24, with slight modifications, were made sub-section (a), while a new subsection — at present subsection (c) — entitled "Rate of Tax on Life Insurance companies," was added. The result is that the proviso on dividend exclusion now appears to qualify only a part of section 24, making it doubtful whether after the amendment, the income from dividends of domestic and resident foreign life insurance companies still enjoy the exemption, although the proviso continues to speak of the "tax imposed by this section."

The case of *Insular Life Assurance Company v. Court of Tax Appeals,*[58] cleared this doubt as in a previous recent case where the Supreme Court ruled:

> ". . . the haphazard amendment of section 24 by several legislative acts — as a result of which the proviso on dividend exclusion is now found in subsection (A) — makes reliance on its grammatical construction highly unsafe and unsound in arriving at its meaning. Since nothing in the history of the 1957 amendment or in the rationale of dividend exclusion indicates the contrary, we hold that domestic and resident foreign life insurance companies are entitled to the benefits of dividend exclusion, the position of the proviso allowing it notwithstanding."[59]

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[57] The proviso reads as follows: "And provided further, That in the case of dividends received by a domestic or resident foreign corporation from a domestic corporation liable to tax under this Chapter or from a domestic corporation engaged in a new necessary industry, as defined under Republic Act Numbered Nine Hundred and One, only twenty-five *per centum* thereof shall be returnable for purposes of the tax imposed by this Section."

[58] G.R. No. 21257, April 30, 1968.

[59] Filipinas Life Assurance Co. v. Court of Tax Appeals and the Commissioner of Internal Revenue, G.R. No. 21258, October 31, 1967.

(e) **Deductions** —

In *Roxas v. Court of Tax Appeals,*[59a] the High Court disallowed the following deductions from gross income claimed by the taxpayer:

1. The amount of forty pesos for tickets to a banquet given in honor of Sergio Osmeña and twenty-eight pesos for San Miguel Beer given as gifts to various persons. They cannot be allowed as representation expenses as claimed by the taxpayer because there was no showing of the connection between such expenses and the business of the taxpayer.

2. The contributions to the Christmas funds of the Pasay City Police, Pasay City Firemen and Baguio City Police were not deductible for the reason that the Christmas funds were not spent for public purposes but as Christmas gifts to the families of the members of said entities. Under section 30(h) of the Tax Code, a contribution to a government entity is deductible when used exclusively for public purposes.

3. The contribution to Our Lady of Fatima chapel located within the premises of the Far Eastern University could not be sustained because *the chapel in question was not shown to belong to the Catholic* Church or any religious organizations. On the other hand, it was found to belong to the University, contributions to which are not deductible under section 30(h) for the reason that the net income of said University inures to the benefit of its stockholders.

On the other hand, the following deductions were allowed:

1.. The contribution to the Manila Police trust fund. Said trust fund belongs to the Manila Police, a government entity, intended to be used exclusively for its public functions.

2. The contributions to the Philippines Herald's fund for Manila's neediest families. Anent the argument of the Commissioner that the Philippines Herald is not a corporation or association contemplated in section 30(h) of the Tax Code, it should be noted that the contributions were not made to the Philippines Herald but to a group of civic-spirited citizens organized by said newspaper solely for charitable purposes. There is no question that the members of this group of citizens do not receive profits, for all the funds they raised were for Manila's neediest families. Such a group of persons may be classified as an association organized exclusively for charitable purposes mentioned in section 30(h) of the Tax Code.

[59a] *Supra,* note 50.

(f) Payment by installment —

Section 51 of the Tax Code, prior to its amendment by Republic Act No. 2343, provided that if any installment of the tax, in the case where the taxpayer was given by the law the option to pay his taxes in two equal installments, was not paid on or before the date fixed for its payment, the "whole amount of the tax unpaid shall be paid upon notice and demand from the Collector of Internal Revenue." The aforementioned section in its present form (Section 51 *[2]*), no longer contains the provision "upon notice and demand of the Collector."

In *Acoje Mining Company, Inc. v. The Commissioner of Internal Revenue,*[60] which was decided on the basis of the original section 51, the main issue was whether the petitioner's obligation to pay the whole amount of its tax arose upon its failure to pay the first installment on its due date, without need of notice or demand from the respondent Commissioner. In this case, the petitioner failed to pay its tax, in the amount of ₱1,148,585, or any amount thereof, on May 15, 1958 as demanded in a letter of the Bureau of Internal Revenue. Nevertheless, after that date, the petitioner received from the Bureau an assessment notice, giving it the option of paying its tax in two equal installments, the first on or before June 15, 1958 and the second on or before August 15, 1958. It was not until March 16, 1959 that the taxpayer was able to pay its tax liability, which it did in one lump sum.

A preliminary issue was whether the taxpayer elected to pay its tax in installment. The Court said that while the law does not specify the manner by which the option to pay in installments should be exercised, it could be made impliedly as was in fact done in this case. The evidence is clear that the parties' understanding was for the petitioner's obligation to be paid in installments. That the petitioner paid the whole amount of its tax when it finally did, in no way warrants the conclusion that it thereby gave evidence of its intention to pay in lump sum.

On the principal issue, the Court declared that the obligation of the petitioner to pay the whole amount of its tax arose without need of notice or demand from the Commissioner. It gave the following reasons: (1) To follow the petitioner's argument would be to place in the hands of the Commissioner the power to condone interests, for simply by neglecting to make a demand, he could effectively prevent the whole obligation from becoming due. This would result in uncertainty and in the uneven application of the law, since defaulting taxpayers would not have to pay interest on the whole amount of their obligation depending on whether or not they have been given notices or demands

[60] G.R. No. 19378, March 27, 1968.

have been made upon them by the Commissioner. Even among those required to pay interest on the whole amount of the tax it is evident that there would be discrimination since notices may be sent or demands made at different times. (2) To say that, in addition to the taxpayer's default, there must as well be a demand from the Government before the obligation could become demandable would be to disregard a legislative design revealed by section 51 to establish a definite date when taxes should be demandable. (3) Section 51 does *not* say that the entire amount becomes demandable *only* upon notice and demand from the Government; what it does say is that the tax "(should) be paid upon notice and demand from the Collector," from which it could just as rightly be concluded that the assumption is that the obligation has earlier become due and demandable. The notice and demand, therefore, in the original text could mean nothing more than a reminder to pay. After all the statute already provided for a notice of assessment to be given to the taxpayer on the first of May.

(g) Surcharge and monthly interest under section 51(e) —

In *Collector of Internal Revenue v. Goodrich International Rubber Co.,*[61] the Supreme Court decided that since the imposition of the 5% surcharge and 1% monthly interest as provided in section 51(e) of the Tax Code, is required expressly by the statute, the failure of the Collector to assign it as error when he appealed to the Supreme Court from the decision of the Court of Tax Appeals should not be an obstacle to its imposition where proper, considering that "taxes are the life-blood of the government and their prompt and certain availability an imperious need."

2. *Specific taxes*

(a) Rectified alcohol —

Under section 128 of the Tax Code, domestic alcohol, when denatured and used for industrial purposes, is exempt from the payment of specific tax. In *Commissioner of Internal Revenue v. Abad,*[62] upon application of the respondent seller of denatured alcohol, a Denaturing Committee of the Bureau of Internal Revenue denatured 33,000 gauge liters of rectified alcohol in accordance with the standard procedures prescribed by the internal revenue law and regulations and thereafter certified said alcohol as denatured. In a surprise inspection made by BIR inspectors, however, it was discovered that the alcohol was not

[61] G.R. No. 22265, March 27, 1968
[62] G.R. No. 19627, June 27, 1968.

completely denatured such that it could still be used to make Chinese wines "without immediate danger to the consumer." Of the alcohol in question, 22,580 gauge liters had been removed from the respondent's warehouse and sold, and only 10,480 gauge liters were left. Was the respondent liable for specific taxes on the 22,580 liters sold, as the Commissioner contended? The Tax Court was of the view that there was no liability for the respondent was not responsible for the removal of the alcohol since the whole process of denaturation was undertaken by a Committee of the BIR without intervention of the respondent. If the alcohol was not in fact denatured completely, the blame should be laid on the denaturing committee over which the respondent had no control, "as indeed it would be unjust to make him liable for its negligence."

The Supreme Court ruled otherwise and held the respondent liable for the specific taxes even in the absence of evidence of irregularity on the part of the respondent and in the face of the presumption of regularity of performance of official duty. Said the Court:

> "(Even if the respondent had no participation in the denaturation), the manufacturer is responsible for the quality of his products and he cannot escape this responsibility by showing that the denaturing committee of the BIR has certified his products to be denatured alcohol. The respondent cannot claim ignorance of this principle for indeed the very permit issued to him expressly stated that the manufacture of denatured alcohol should be under his 'exclusive responsibility' . . . . A contrary rule would encourage irresponsibility on the part of manufacturers, let alone collusions between taxpayers and revenue officials to defraud the public treasury. It is a settled rule of law that in the performance of its governmental functions the State cannot be estopped by the neglect or omission of its agents. Nowhere is this more true than in the field of taxation.
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> ". . . This liability is unaffected by the probability that the alcohol might have been used for industrial purposes rather than for consumption, because the law specifically provides that specific taxes shall be paid 'immediately before removal from the place of production." It does not matter to what use the article subject to tax is put; the tax attaches from the time the article is removed from the place of production 'to be put into the commerce or trade of the country.'
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> "Here the alcohol was sold to customers on various dates between August 21 and August 28, 1958. It was on these dates that the respondent Abad's liability for the tax arose and, therefore, it is from these dates that interest at the legal rate should be paid, pursuant to Article 2209 of the Civil Code. The petitioner's demand, contained in this letter of assessment of September 2, 1958, is unnecessary for the purpose of fixing the respondent Abad's liability because the law establishes definite dates for the payment of various taxes. . . ."

3. *Taxes on business and occupation*

(a) Status of cement prior to Republic Act No. 1299 —

Before the effectivity of Republic Act No. 1299 on June 16, 1955, there was doubt as to whether cement was subject to the sales tax or percentage tax as a manufactured product, under section 186 of the Tax Code in connection with section 194(x) thereof. Republic Act No. 1299 removed the ambiguity by incorporating the definition of "minerals" and "mineral products" in section 246 of the Tax Code, which definition included cement, thereby removing it from the category of a manufactured product for the purposes of the sales or percentage tax.

In *Cebu Portland Cement Company v. Collector of Internal Revenue,*[63] petitioner sought the refund of the sales or percentage taxes it had paid prior to the enactment of Republic Act No. 1299 on the ground that since the purpose of the amendment was merely to clarify the terms in section 246, this section should be construed as if it had been originally passed in its amended form, so that cement should be considered "mineral product" even before the passage of the amendatory law, and therefore exempt from the sales or percentage tax, pursuant to the provisions of section 188(c) of the Tax Code.

In rejecting the claim of the taxpayer, the Supreme Court pointed out that while one of the purposes of the amendment was to "clarify the doubt of the taxpaying public on the interpretative scope of the two terms," it certainly could not have been the intention of the lawmakers to unsettle previously consummated transactions between the taxpayers and the Government, no matter in what manner the meaning of the terms were construed in the past. No mention was made in the deliberations about the taxes previously collected or assessed on the sales of cement, although Congress must have been aware of these assessments due to an admitted confusion as to the meaning of the terms defined in the amendment. Tax laws operate prospectively, whether they enact, amend or repeal, unless the purpose of the Legislature to give retrospective effect is expressly declared or may be clearly implied from the language used, which is not the case in Republic Act No. 1299. It thus results, the Court concluded, that before the enactment of the amendment to section 246, when cement was not yet placed under the category of either "minerals" or "mineral products," it was not exempt from the percentage tax imposed by section 186 of the Tax Code, and was, therefore, taxable as a manufactured product. For purposes of this tax, however, the gypsum and bag containers used in

[63] G.R. No. 20563, October 29, 1968; See *supra,* note 24.

the production and sale of cement, are deductible from the gross selling price in computing the 7% compensating tax levied on the sale of cement before Republic Act No. 1299.

(b) Party liable —

In *Heng Tong Textiles Co., Inc. v. Commissioner of Internal Revenue,*[64] deficiency taxes were assessed on importations of textiles against the petitioner on the ground that it was the real importer. The goods were withdrawn from Customs by Pan-Asiatic Commercial Co., Inc., which paid, in the name of petitioner, the corresponding advance sales tax under section 183(b) of the Internal Revenue Code. The Court of Tax Appeals affirmed the assessment on the following grounds: *First,* Petitioner and Pan-Asiatic Commercial Co. were sister corporations; *second,* the commercial documents covering the importations were all in the name of the petitioner; *third,* Pan-Asiatic Commercial Co. wrote the petitioner a letter the clear tenor of which showed that it was the petitioner who ordered the goods in question; *fourth,* there were both documentary and testimonial evidence that Pan-Asiatic Commercial Co. acted merely as indentor. The petitioner excepted to the findings of the Court of Tax Appeals, contending that the importation papers were placed in the name of the petitioner only for purposes of accommodation, that is, to introduce the petitioner to textile suppliers abroad, and that the petitioner was not in a financial position to make the importations in question, valued at over a million pesos, since its paid-up capital was only ₱30,000. In sustaining the findings and conclusion of the Tax Court, the Supreme Court said:

"... These circumstances show nothing but a private arrangement between the petitioner and Pan-Asiatic Commercial, which in no way affected the role of the petitioner as the importer as far as the Government and its right to collect the taxes were concerned. Pan-Asiatic Commercial might have furnished the necessary financing for the importations in question, but that did not militate against the petitioner's being the importer; nor did the idea of building up its reputation among textile suppliers abroad render it necessary for the withdrawal of the goods from customs and the payment of the advance sales tax to be made in the petitioner's name, these being purely local operations....

"If anything, we perceive in the entire set-up an arrangement through which the sales taxes due could be minimized, by having Pan-Asiatic Commercial, as indorsee of the goods, withdraw the same from Customs upon payment of the advance sales tax and then execute a sale thereof to Heng Tong Textiles at cost, or at a negligible profit. As it turned out, according to the Court of Tax Appeals, 'the goods were made to appear as having (thus) been sold . . . so that no sales tax was paid by petitioner upon the sales of such goods . . . (and) neither was any

[64] G.R. No. 19737, August 26, 1968.

sales tax paid on the supposed sales of said goods by the Pan-Asiatic Commercial to the petitioner as the sales were made apparently at cost.' This is so because 'during the period in question', the Court of Tax Appeals added, 'the sales tax on sales of imported articles was based on the gross selling price thereof, the advance sales tax paid upon removal of the goods from the customhouse being credited against the tax on the actual gross selling price paid by the importer. (See Rep. Act No. 253; General Circular No. V-106, February 19, 1951.)'"

However, according to the Court, the arrangement resorted to does not justify by itself alone the penalty of 50% of the amount due for willful neglect to file a return or willful making of a false or fraudulent return under section 183(a) of the Tax Code. An attempt to minimize one's tax does not necessarily constitute fraud. It is a settled principle that a taxpayer may diminish his liability by any means which the law permits. The intention to minimize taxes when used in the context of fraud, must be proved to exist by clear and convincing evidence amounting to more than mere preponderance of evidence, and cannot be justified by mere speculation. The actuations of the petitioner is not incompatible with good faith on its part, that is, with a genuine belief that by indorsing the goods to Pan-Asiatic Commercial so that the latter could, as it did, take delivery thereof, Pan-Asiatic Commercial would in law be considered the importer.

In *National Power Corporation v. Arañas,*[65] the petitioner, a government corporation, purchased lumber from the Heald Lumber Company. The sales tax due on said sales of lumber at the rate of 5% of the gross selling price, imposed by section 186 of the Tax Code, was not paid by the seller upon the representation of petitioner that its purchases were not taxable, and that in any case, it would assume liability for such tax. The issue involved the petitioner's liability for the 25% surcharge for non-payment of the sales tax within the statutory period.

In holding the petitioner liable, the Supreme Court said that the petitioner cannot honestly maintain that its failure to pay the sales tax was due to its reliance on the opinion of the Secretary of Justice to the effect that the petitioner was exempt from the tax. The said opinion was rendered almost one year after the petitioner's tax liability arose. Moreover, after the opinion of the Secretary of Justice was set aside by the Cabinet, petitioner still failed to pay the sales tax due within the statutory period. Besides, it is quite clear that the exemption provided in the charter of the petitioner (Republic Act No. 358), refers only to those taxes directly payable by the petitioner. Insofar as its purchases

[65] G.R. No. 21402, September 23, 1968.

of lumber were concerned, the sales tax imposed by section 186 of the Tax Code was payable by the seller, and if the assessment was made against the petitioner it is because it assumed liability therefor. To exempt the petitioner from such liability would be in effect exempting the seller itself, which is not justified under the provisions of the Revenue Code.

(c) Percentage sales tax under sec. 185(k) —

In *Chu Hoi Horn v. Court of Tax Appeals,*[66] the pretense of the petitioner that he was engaged in the business of leasing and not selling neon signs was not given credence, and the petitioner was therefore held liable for the percentage sales tax under section 185(k) of the Revenue Code on his transactions. It was evident from the contracts of the petitioner with his customers that the intent of the parties was to have the total of the payments equal the construction and installation cost of the neon sign which was a strong indication that the real intent was for the ownership over the neon sign to pass to the "lessee" upon the termination of the term of the alleged "lessee." Furthermore, the fact was that a neon sign made specially for a customer is useless to any other person.

4. *Mining taxes*

With the enactment of Republic Act No. 1299 amending section 246 of the Revenue Code, cement no longer became subject to the percentage sales tax under section 186 in connection with section 194(x) of said Code.[67] Instead, the *ad valorem* tax of 1½% under section 243 in connection with section 246 of the Revenue Code became applicable.

In *Cebu Portland Cement Co. v. Commissioner of Internal Revenue,*[68] it was held that the aforementioned *ad valorem* tax cannot be applied directly to cement. Since the *ad valorem* tax is a severance tax, *i.e.* a charge upon the privilege of extracting minerals from the earth, it is assessed upon the value of the *quarried minerals used* in producing cement and not upon cement *qua* cement. The tax is based on the actual market value of the said minerals, not on the cost of production or extraction. The cost of the paper bag container in which the cement is put for sale should not be included in the computation of the tax.

The foregoing ruling was reiterated in *Republic Cement Corporation v. Commissioner of Internal Revenue.*[69]

[66] G.R. No. 22046, October 29, 1968.
[67] See *supra*, note 63.
[68] G.R. No. 22605, January 17, 1968.
[69] G.R. No. 20660, June 13, 1968.

5. *Miscellaneous taxes*

(a) Amusement tax —

In an earlier case,[70] it was held that a financier or capitalist of a stage presentation cannot be held liable for the payment of the amusement tax under section 260 of the Revenue Code.

In *Sevilla v. The Collector of Internal Revenue*,[70a] the respondent, on the basis of the gross proceeds derived from seven bullfight exhibitions held in Manila, assessed and demanded the amount of ₱111,056.84 as amusement tax and surcharge from the petitioner. The sole issue for determination was whether or not petitioner may be properly considered the proprietor or operator of the bullfight exhibitions for purposes of the tax. The Supreme Court held that the case under consideration presented a different working arrangement from what existed in the case of *Blaquera v. Aldaba*. The petitioner in the instant case was liable for the amusement taxes because in addition to financing the bullfight exhibitions, she assumed active involvement in the business venture. She expressly gave to the promoter authority to enter into a contract with the representatives of the bullfight troupe to stage the bullfight exhibitions in the Philippines; she acknowledged having granted to Tabacalera the exclusive right to use the bullfights for advertisement of its products; she contracted the services of Harry Lyons, Inc. for the construction of the bullfight arena; she took charge of the disbursements and gate receipts during the bullfight exhibitions as well as the recording and keeping of the pertinent books of account. She was therefore more than a mere financier or capitalist. The argument of the petitioner that she joined the promoter as manager through a contract of management in order to protect her investment was not given any weight because at the time she had not yet spent any significant amount.

Moreover, the fact that it was the promoter who approved and signed the amusement tax return and that the statement of income and expenses of the venture was signed likewise by him as promoter and operator had little persuasive effect, considering that said documents were prepared and filed after the petitioner had been assessed for the amusement taxes. It was nothing but a subtle attempt to render the collection of the taxes due more difficult.

[70] Blaquera v. Aldaba, G.R. No. 10534, March 30, 1960, 58 O.G. 5190 (July, 1962).

[70a] G.R. No. 20060, April 30, 1968.

(b) Forest charges —

Commissioner of Internal Revenue v. Dingalan Forest Products Corporation,[71] reiterated the ruling[72] that forest charges are internal revenue *taxes,* whether one labels them taxes on property or excise taxes, *i.e.* taxes upon the privilege of cutting and carting away timber and forest products, and do not, accordingly, represent a *sale* made by the Government of forest products to the concessionaire; therefore, the sale by the latter to customers of the forest products are "original sales" subject to fixed and percentage taxes.

(c) Franchise tax —

Under section 259 of the National Internal Revenue Code, the tax on corporate franchise "shall be due and payable as specified in the particular franchise, or, in case no time limit is specified therein, the provisions of section one hundred and eighty-three shall apply; and if such taxes . . . remain unpaid for fifteen days from and after the date on which they must be paid, twenty-five *percentum* shall be added to the amount of such taxes . . . which increase shall form part of the tax." Section 183(a) requires the tax to be paid within twenty days after the end of each month.

In *Commissioner of Internal Revenue v. Visayan Electric Company,*[73] the company's franchise provided that the franchise tax "shall be due and payable quarterly." The company made some payments of the franchise tax after fifteen days — although within twenty days — of the month following the end of each calendar quarter. Is it liable for the 25% surcharge? According to the Commissioner, since the franchise itself sets the time limit for the payment of the tax, section 183 finds no application, and the tax is *immediately* demandable *at the end* of each calendar quarter; thus, the 25% surcharge would be collectible if the percentages taxes remain unpaid after fifteen days from the end of each calendar quarter.

Not so, said the Supreme Court. The reason, in the language of the Court itself, is that —

> ". . . The term 'due and payable quarterly' in this case merely indicates the frequency of payment of the franchise tax, *viz.,* every three months. It does not refer to the *time limit* or, in the precise language of Section 259, "the *date on which they (the taxes) must be paid.*"

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[71] G.R. No. 24405, August 27, 1968.

[72] Laid down in Cordero v. Conda, G.R. No. 22369, October 15, 1966; 64 O.G. 7077 (July, 1968), reversing Collector of Internal Revenue v. Pio Barretto and Sons, G.R. No. 11805, May 31, 1960, 58 O.G. 4952 (July, 1962).

[73] G.R. No. 22611, May 27, 1968.

> "Under Section 183(a) in relation to Section 259, second paragraph, the law has opted to collect the tax within twenty days after it became due and payable, namely, the last day of each quarter. The time limit or the *date* on which the percentage tax must be paid by the company is the twentieth day after the last day of each quarter. Section 259 grants another grace period of fifteen days from the termination of this time limit before imposing the 25% surcharge."

In support of its conclusion, the Court said that if the law has chosen to allow a fifteen-day grace period to taxpayers paying every month, no cogent reason exists why the same period — if not longer — should be denied taxpayers paying every three months. The latter require more time for preparation for their return covers a longer period. Moreover, it would be extremely unreasonable to make the tax immediately demandable at the end of each calendar year for "it is well-nigh impossible for the taxpayer to add up his income, write down the deductions, and compute the net amount taxable as of the last working hour of the last day of the quarter, and at the same time go to the nearest revenue office, submit the quarterly return and pay the tax." This accounts for the fact that section 183(a) gives the taxpayer a leeway of twenty days after the end of each quarter to do all these.

(d) Special excise tax: Republic Act No. 601 —

Under Republic Act No. 601, "stabilizer and flavors" imported from abroad which are exempt from the special excise tax of 17% on the value in Philippine pesos of foreign exchange sold by the Central Bank or other authorized banks, refer to those used for *food* and does not include those used for the manufacture of cigars and cigarettes (tobacco flavors), as held in *Republic v. La Perla Cigar and Cigarette Factory, Inc.*[74]

B. CUSTOMS DUTIES AND OTHER IMPOSTS

1. *Basis of customs duties, special import tax, and compensating tax*

(a) Actual price or retailer's published price —

In *The Commissioner of Customs v. Celdran,*[75] sometime in 1960, respondent Celdran, a returning resident from the United States, brought with him as part of his personal belongings, a Chevrolet car, 1959 model. The issue was whether the value of the car, for purposes of the computation of the customs duties, special import and compensating

[74] G.R. No. 19880, August 15, 1968.
[75] G.R. No. 23425, February 26, 1968.

taxes, should be the price given in the seller's invoice, or the value as determined by the custom's appraiser (the "red-book" value or the published retail factory price).

Ruling that the seller's invoice should prevail, the Supreme Court declared that the evidence showed that the car invoice, issued by the Byrne Bros. Inc., was not an ordinary sales invoice, but a certified "Bill of Sale," signed by the dealer's vice-president and ratified before a notary public of New York; that the price of the car was fully paid; that a consular invoice was issued by the Consulate General of New York and ratified by the Philippine Consul, as well as verified by the Philippines customs attache in New York, stating that the "selling price to purchaser" was as indicated in the bill of sale. On the other hand, there was absolutely no evidence that this invoice price of the car was not its actual purchase price, so as to justify a disregard of it and a resort to the published retail factory price. Again, the record did not show that any customs examiner has made his report in writing on the face of the entry, as required by section 1405 of the Tariff and Customs Code, that the value of the car had been determined by him to be higher than its invoice price.

The Court concluded therefore that considering the public character of the certified bill of sale and the official character of the consular invoice adverted to above, and there being no reasonable ground to deny to these documents, the faith and credence normally due to them, this issue should be resolved in favor of the respondent.

(b) Margin fee of 25% on foreign exchange —

By authority of Republic Act No. 2609, the Monetary Board issued Central Bank Circular No. 95 which required the payment by a purchaser of foreign exchange to the authorized agent bank selling the foreign exchange, a margin fee of 25% of the value of the Philippine peso on such sale. Thereafter several cases arose on the question whether the margin fee should be added to the basis in computing customs duties, special import taxes and compensating taxes.

In *Commissioner of Customs v. Celdran,*[76] a case that has just been referred to above, the Supreme Court ruled that inasmuch as the margin fee applies only to sales of foreign exchange by banks duly authorized to sell the same as agents of the Central Bank and there has been neither such sale of foreign exchange nor the intervention of any agent bank of the Central Bank, the margin fee of 25% did not form part of the total value of the imported car and should be eliminated from

[76] *Supra.*

the tax base of the special import and compensating taxes. Celdran bought the car in the United States with savings from his earnings as a physician there.

In *Caltex (Philippines) Inc. v. Acting Commissioner of Customs,*[77] the margin fee was considered in converting the value of the importations of the company from dollars to pesos for purposes of imposing customs duties and the special import tax. The Court elaborated on the nature of the margin fee and why it should be deemed part of the rate of exchange. Section 204 of the Tariff and Customs Code provides that for the assessment and collection of import duty upon imported articles, the value and prices thereof quoted in foreign currency shall be converted into the currency of the Philippines at the ***current rate*** of exchange or value specified or published, from time to time, by the Central Bank. The phrases "current rate of exchange" and "value specified or published by the Central Bank" mean the value of the peso as fixed by the Central Bank regardless of the par value of the peso under the Coinage Act of 1903. A margin levy on foreign exchange is a form of control or restriction designed to discourage imports and encourage exports, and ultimately "curtail any excessive demand upon the international reserve," in order to stabilize the currency. The immediate impact of the margin levy is on the rate of foreign exchange; in fact its main function is to control the exchange rate without changing the par value of the peso as fixed in the Bretton Woods Agreement Act. And insofar as its legality is concerned, this had been already settled in a previous decision.[78]

The margin levy is not a tax on the purchase of foreign exchange for the reason that a tax is levied to provide revenue for government operations, while the proceeds of the margin fee are applied to strengthen our country's international reserves.

With respect to the special import tax, while the law does not specify the rate of exchange to be used in its determination, the provisions dealing with the tax base for the special import tax[79] and that for customs duties are *in part materia* and should therefore be construed and applied similarly, in the sense that for purposes of reckoning the special import tax due on the importation in question, the value of said articles expressed in foreign exchange should be converted at the current rate of exchange which includes the margin fee of 25%.

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[77] G.R. No. 24619, February 26, 1968.

[78] Chamber of Agriculture and Natural Resources of the Philippines v. Central Bank, G.R. No. 23244, June 30, 1965.

[79] Rep. Act No. 1394 (1955), sec. 2.

2. *Special import tax applied retroactively*

In *Commissioner of Customs v. Caltex (Philippines) Inc.*,[80] pursuant to the authority vested in him by section 2 of Republic Act No. 1394, on July 14, 1959, the President issued Proclamation No. 601 suspending "during the calendar year 1959, starting from January 1st," the rate of 11.9% prescribed therefor in section 1 of Republic Act No. 1394, and increasing the special import tax for said year to 15.3%, upon the ground that such measure was "considered necessary to restore in the calendar year 1959 . . . the total revenue to be collected on the importation of goods . . . to the level of the exchange tax collected . . . during the calendar year 1955." The question was whether the increased special import tax rate of 15.3% was applicable to the importations of the respondent company, which were made from January to September 1959. The Court of Tax Appeals ruled that it was not applicable to the importations in question because such importations were made prior to the publication of said proclamation in the issue of the Official Gazette dated July 27, 1959, which was actually released to the public on September 22, 1959, and that said increase could apply only to importations made on the 15th day after the date of actual release of the publication of the proclamation in the Official Gazette, or October 8, 1959, or subsequently thereto.

In reversing the Tax Court, the Supreme Court stated, in the *first place,* that it is obvious from the context and spirit of the provisions of Republic Act No. 1394 that the expression "succeeding calendar year" refers, not to the year succeeding the issuance of the executive proclamation increasing the rate of special import tax, but to the *calendar year* following that in which "the total revenue derived from customs duties and the special import tax . . . is less . . . than the proceeds from the exchange tax imposed . . . during the calendar year 1955." *Secondly,* since the proclamation could possibly be issued neither before the end of the calendar year in which there was a reduction of customs revenues nor on the first day of the succeeding calendar year for lack of the necessary data, but possibly only sometime after the said first day, the result would be, if the view of the Tax Court were accepted, that the reduction in the total revenue for the preceding year could not be offset immediately, but would have to wait until, at least, one full year later, thus unduly delaying the application of the remedy necessary to protect the stability of our currency and the national economy.

Thirdly, section 11 of the Revised Administrative Code, relied upon by the Tax Court, is not controlling for it refers to statutes passed by the Con-

[80] G.R. No. 24192, May 22, 1968.

gress of the Philippines and does not apply to executive proclamations; it applies only in the absence of special provisions, whereas the proclamation explicitly declared its effectivity "starting from January 1st"; said section also provides that the Official Gazette is conclusively presumed to be published on the date indicated therein as the date of issue.

Lastly, Proclamation No. 601, like tax laws in general, is not penal in nature. A law merely imposing taxes, without strictly penal sanctions for violations thereof, may have a retrospective effect, without being an *ex post facto* law.

3. *Exemption from customs duties under the Bell Trade Act*

In *Farm Implement & Machinery Co. v. Commissioner of Customs,*[81] hereinabove referred to, it was held that the importation of zinc oxide dry pigment was not exempt from customs duties under the Bell Trade Act for the following reasons: To be exempt from customs duties under the aforementioned law, the importation must either be (1) "wholly of the growth, product or manufacture of the United States," or (2) produced in the United States "with the use of materials *imported into the United States* the aggregate value" of which "at the time of the importation into the United States" does not exceed twenty percentum of the value of the article exported to the Philippines, as determined by our customs laws. An exemption from payment of revenues must be strictly construed; accordingly, one who claims the privilege of exemption has the burden of proof. The petitioner failed to prove that the zinc oxide qualifies as either tax free product above-mentioned. The sworn certificates issued by the supplier and the manufacturer, which were presented by the consignee as its evidence, are not determinative of the exemption. The first is incompetent evidence because the supplier who was not the manufacturer of the product cannot be presumed to have knowledge of the source of the raw materials used in the manufacture of said product. As regards the second, all that was certified to was the zinc oxide was produced in the United States without a categorical statement that it was wholly of the growth, product or manufacture of the United States, or that the value of the materials imported into the United States used in the manufacture of the zinc oxide does not exceed the required 20%. On the other hand there was evidence that the raw materials used in the manufacture of the zinc oxide were imported — wholly or partially — into the United States. The packages were found tagged with red labels which, as required by U.S. customs laws and regulations, clearly indicated that the zinc oxide was constituted of materials imported into the United States duty free and required to be delivered to the Collector of Customs at a port of exit for exportation to a foreign country.

[81] See *supra,* note 45.

4. *Exemption from compensating tax under Reparations Act*

Commissioner of Internal Revenue and Commissioner of Customs v. Philippine Ace Lines, Inc.[82] reiterated the ruling in a 1967 decision [83] to the effect that the exemption from the compensating tax by virtue of the provisions of Republic Act No. 3079 amending the Reparations Act (Republic Act No. 1789), extended to private parties who purchased reparations goods long before the approval of the amendatory act, by the renovation of their utilization contract with the Reparations Commission and by the voluntary assumption by such private end-users of all the "new obligations provided for in this amendatory Act."

5. *No-dollar imports*

In the further enforcement of foreign exchange controls imposed by the Government at some time, Central Bank Circular No. 45 which required "any person or entity who intends to import or receive goods from any foreign country for which no foreign exchange is required or will be required of the banks, to apply for a license from the Monetary Board to authorize such import," and Central Bank Circular No. 44 which, covering importations requiring purchase of foreign exchange, provided that "no item of import shall be released by the Bureau of Customs without the presentation of a release certificate issued by the Central Bank or any Authorized Agent Bank in a form prescribed by the Monetary Board," were promulgated. To a long line of decisions sustaining the validity of these circulars and of the forfeiture of merchandise imported in violation thereof, three more cases were added last year.

The cases of *Capulong v. The Acting Commissioner of Customs,*[84] *De la Cruz v. Court of Tax Appeals* [85], *De la Cruz v. Court of Tax Appeals*[86] and *Leuterio v. Commissioner of Customs,*[87] travel the well-beaten decisional path holding[88] that importations through the so-called no-dollar remittance system, made while Central Bank Circular Nos. 44 and 45 were in force, required a Central Bank release certificate under the theory that

[82] G.R. Nos. 20960-20961, October 31, 1968.

[83] Commissioner of Internal Revenue v. Bothelo Shipping Corporation, G.R. Nos. 21633-34, June 29, 1967, 64 O.G. 10590 (Oct., 1968).

[84] G.R. No. 22991, January 16, 1968.

[85] G.R. Nos. 23335 & 23452, February 29, 1968.

[86] G.R. Nos. 23334 & 23451, February 29, 1968.

[87] G.R. No. 21800, June 22, 1968.

[88] E.G. Capulong v. Aseron, G.R. No. 22989, May 14, 1966; Acting Commissioner of Customs v. Leuterio, G.R. No. 9142, October 17, 1959; Tong Tek v. Commissioner of Customs, G.R. No. 11947, June 30, 1959; 56 O.G. 5444 (Aug., 1960); Pascual v. Commissioner of Customs, G.R. No. 10979, June 30, 1969, 56 O.G. 7169 (Nov., 1960); Commissioner of Customs v. Eastern Sea Trading, G.R. No. 14279, October 31, 1961; Commissioner v. Santos, G.R. No. 11911, March 30, 1962, 61 O.G. 8358 (Dec., 1965); Seree Investment Co. v. Commissioner, G.R. Nos. 20847-49, June 22, 1965; Bombay Department Store v. Commissioner, G.R. No. 20460, September 30, 1965; Lazaro v. Commissioner, G.R. Nos. 22512 & 22514, December 22, 1967.

all imports, including those involving no-dollar exchange, represent either an "immediate demand . . . or a potential demand of foreign exchange," and that the release certificate was necessary "to keep a tab of the volume of imports that come into the Philippines in order to enable the Central Bank to make a survey and study of the appropriate measures that may be adopted to remedy the long-drawn financial crises in the country"; that importations without the required release certificate constituted a violation of sections 1250 and 1363 of the Revised Administrative Code (now sections 2530 of the Tariff and Customs Code) and are subject to forfeiture provided therein; and that the liabilities thus incurred by the importer have not been abrogated or extinguished in consequence of the enactment of Republic Act No. 1410, prohibiting the no-dollar importation system, or by the promulgation of Central Bank Circular No. 133, which governs dealings requiring purchase of foreign exchange.

6. *Wharfage dues and berthing fees*

Under the Tariff and Customs Code, wharfage dues (sections 2801 and 2802) and berthing fees (sections 2901 and 2903) are collectible in connection with the unloading of goods and the mooring of vessels in foreign trade at any pier or wharf in the Philippines.

The cases of *Procter & Gamble Philippine Manufacturing Corporation v. Commissioner of Customs,*[89] and *Compania General de Tabacos de Filipinas v. Acting Commissioner of Customs,*[90] reiterated the ruling sustaining the right of the Government to collect wharfage dues, as well as berthing fees, even if the wharf or pier is privately owned. The Supreme Court explained that berthing fees are like wharfage dues in the sense that they are imposed by law for the use of the wharf, regardless of the ownership thereof, the only difference between the two being that while berthing fees are assessed against the vessel, wharfage dues are assessed against the cargo. The right of the Government to collect wharfage dues regardless of the fact that the shipment is made from a private wharf has been sustained since 1927 in *Philippine Sugar Centrals Agency v. Collector of Customs.*[91] And as berthing fees are identical to wharfage dues in policy, the same rule must therefore apply with respect to them.

These are charges, continued the Court, from which it cannot be said that no conceivable benefit may be derived by those on whom they fall for the money derived therefrom constitutes a trust fund for the purpose of constructing wharves by the Government and the maintenance of bodies of water in navigable condition.

[89] G.R. No. 24173, May 23, 1968.
[90] G.R. No. 24247, May 13, 1968.
[91] 51 Phil. 131 (1927).

In the *Procter & Gamble (P.M.C.)* case, the additional issue was dealt with, as to whether wharfage dues are covered by the tax exemption provided in Republic Act No. 901, which exempts a new and necessary industry "from payment of all taxes directly payable... in respect to said industry". It was argued on behalf of the petitioner company that according to American decisions, the word "tax" when used alone includes customs levies or import duties, and that "customs" are "*taxes* levied upon goods or merchandise imported or exported". The Court disagreed saying that American authorities are not controlling for Philippine laws evince a different intended meaning for these concepts. Thus the Constitution distinguishes between taxes, on the one hand, and "imposts," that is to say, tariff rates or duties imposed for the importation of goods, on the other. (Article VIII, section *[2]* of the Constitution.) Similarly, the Constitution does not consider "wharfage dues" as part of "tariff rates" or customs duties (Art. VI, sec. 22 *[2]*. Neither, does the Tariff and Customs Code. Customs duties are governed by Book I, Title of said code, under the headings "Tariff Law" and "Import Tariff," respectively, whereas wharfage dues are collectible pursuant to Book II thereof, Title VII of said Book, under the caption "Fees and Charges Collectible by the Bureau of Customs." Indeed said Code regards customs duties, taxes and wharfage dues as three distinct and separate concepts (e.g. section 1604). Also, wharfage dues, like berthing fees, are imposed to form a special fund known as "Port Works Funds," while revenue derived from customs duties form part of the general funds of the Government.

Moreover, the exemption prescribed in Republic Act No. 901 is limited to "internal revenue taxes" which are *directly* payable in respect of a new and necessary industry. Assuming that palm oil and coconut fatty alcohol are necessary for petitioner's industry, it is not *indispensable* therefor that said products be imported. Hence, the wharfage dues in question are not *directly* imposed upon said industry. They are, at best, an *indirect* levy upon petitioner's industry, and hence, not covered by its exemption. At any rate, it is obvious that wharfage dues are not internal revenue taxes.

MUNICIPAL TAXATION

1. *Real property tax*

(a) Exemption from tax —

In *The National Waterworks and Sewerage Authority v. Quezon City,*[92] it was ruled that the properties of the petitioner are exempt from realty

[92] G.R. No. 25310, April 26, 1968.

tax as properties of the Republic of the Philippines under section 47(a) of Republic Act 537, the Revised Charter of Quezon City. The fact that some of these properties were leased to private entities — the Capitol Hills Golf Club and the International Development Corporation — does not defeat the exemption, in the light of the ruling in the case of *Board of Assessment Appeals, Province of Laguna v. Court of Tax Appeals and NWSA,*[93] that the exemption obtains even as to properties that are patrimonial in character, as long as they are owned by the Republic of the Philippines.

(b) Requirement of protest —

In the same *NWSA v. Quezon City* case, the Revised Charter of Quezon City, the law applicable, required payment under protest as a condition precedent to the recovery of taxes erroneously paid. Since NWSA did not pay under protest the realty taxes in question, except for 1957 and 1961, recovery of the same cannot be made as to the unprotested payments. NWSA, however, argued that, the payments having been made in good faith, they are in the nature of *solution indebiti,* so that an action for their recovery falls under the rules and concept of an ordinary action, not necessitating the prerequisite of payment under protest.

Rejecting the contention, the Supreme Court pointed out that starting from 1957 up to 1962, NWSA already knew it was exempt, as shown by its payment in 1957 under protest, reiterated in 1961. It should therefore have paid the rest of the taxes from 1957 to 1962 under protest. Section 63 of Republic Act 537 applied to said payments and their recovery. Said law directs its limitation to the court, not to the taxpayer, stating that no court can entertain a suit unless the taxes are paid under protest.

In this case, it was implicitly held that the action to recover realty taxes prescribed in six years.

(c) Penalty for late payment of realty tax —

In *Padilla v. City of Pasay,*[94] section 43 of the charter of the respondent city, Republic Act 183, required all real estate to be "due and payable annually on the first day of June and from this date such taxes together with all penalties accruing thereto shall constitute a lien on the property subject to taxation." However, the same provision allowed the taxpayer to pay in two installments "at not later than the thirty-first day of May and the thirtieth day of October,"

[93] G.R. No. 18125, May 31, 1963, 62 O.G. 5391 (July, 1966).
[94] G.R. No. 24039, June 29, 1968.

respectively. It also provided that "at the expiration of the time for the payment of the real estate without penalty, the taxpayer shall be subject, from the first day of delinquency, to the payment of a penalty at the rate of two per centum for each full month of delinquency that has expired, on the amount of the original tax due, until the tax shall have been paid in full. . . ."

The petitioner-taxpayer paid the first installment of the realty tax due on time, but the second installment, through oversight, was remitted one month after the due date. The question was whether or not the taxpayer should be held liable for the penalty based on the amount of the whole tax to be computed from the date such tax was due, or from the time the second installment ought to have been paid but was not.

In holding that the penalty based on the whole amount of the tax to be computed from the date such tax was due, the Supreme Court said that the specific language of the law which is controlling yields no other conclusion but that the taxes are *due and payable* "on the first day of June" from which date "such taxes together with all the penalties accruing thereto shall constitute a lien on the property subject to such taxation." The law is specific and mandatory: the penalty is to be based "on the amount of the original tax due" computed from the time the same was due, i.e. June 1st. The fact that the first installment was paid on time does not benefit the taxpayer at all, if thereafter the second installment were made on time. In effect then, the option thus granted, to pay in two installments, must be strictly complied with, otherwise the operation of the plain statutory command that the tax due and payable on June 1st becomes unavoidable, and delinquency is to be computed from such date. In further support of its conclusion, the Court cited *Acoje Mining Co., Inc. v. The Commissioner of Internal Revenue.*[95] The total penalty, therefore, for which the petitioner was liable amounted to ₱169.50.

Two justices dissented. The law said that the 2% penalty would be paid for each full month of delinquency that had expired, from the first day of delinquency. As the demurring justices construed it, the first day of delinquency was the first day "after expiration of the time for the payment of the real estate tax without penalty," — which was the last day for paying the second installment, the first installment have been paid in due time. The first day of delinquency here was that day following the day the taxpayer failed or omitted to perform or violated his statutory duty. The words "due and payable" merely denoted the existence of a simple indebtedness without reference

[95] See *supra,* note 60.

to the time of payment; they would not necessarily refer to the time limit or the date on which the taxes *must* be paid.[96] The *Acoje Mining Company* case was not in point, the facts thereof being different. Therefore, the petitioner was liable for penalties only in the amount of ₱28.25.

(d) Taxpayer's remedy in case of erroneous assessment —

In *Victorias Milling Co., Inc. v. Court of Tax Appeals*,[97] in 1947, the provincial assessor of Negros Occidental assessed for purposes of the real property tax, machineries belonging to the petitioner. In making such assessments the provincial assessor allowed depreciation by using the "fixed percentage of diminishing book value method," instead of the "straight-line method" as provided for by Provincial Circular dated February 7, 1940 of the Department of Finance. The petitioner paid the tax under protest but instead of appealing the assessments to the Provincial Board of Assessment Appeals as required in section 17 of the Assessment Law, it filed with the Court of First Instance an action for refund.

In finding the Court of First Instance to be without jurisdiction over the action, the Supreme Court pointed out that it is settled that when an assessment is illegal and void, the remedy of the taxpayer who had already paid the realty tax under protest, is to sue for refund in the competent court of first instance. On the other hand, when the assessment is merely erroneous, his recourse is to file an appeal in the Provincial Board of Assessment Appeals within 60 days from receipt of the assessment. An assessment is illegal and void when the assessor has no power at all to act; it is erroneous when the assessor has the power but errs in the exercise of that power. Since the provincial assessor had the power to make the assessments, but in the exercise of that power he deviated from the procedure laid down by the law in that he employed the wrong depreciation method, logically, the assessment should be considered as erroneous. By the doctrine of the primacy of administrative remedy, the Provincial Board of Assessment Appeals had jurisdiction over the dispute to the exclusion of the court of first instance.

2. *Scope and extent of municipal taxing power*

Since the taxing authority of local governments is limited and depends for its existence upon some clear grant, express or implied, from the sovereign power, litigation involving municipal taxation has

[96] Citing Commissioner of Internal Revenue v. Visayan Electric Company, a 1968 case; see *supra*, note 73.
[97] G.R. No. 24213, March 13, 1968.

often centered on the issue of whether the municipal government had exceeded the limits of its taxing power in imposing a particular tax. The following cases were concerned with such issue.

(a) **Municipal license tax —**

When a person or company is already taxed on its main business, it may not be further taxed for engaging in an activity or work which is merely a part of, incidental to, and necessary to its main business.[98]

In *Municipality of Opon (now Lapu-Lapu City) v. Caltex (Phil.) Inc.,*[99] the respondent company, engaged in the business of importing, distributing and selling gasoline, kerosene, and other petroleum products, manufactured within the jurisdiction of the petitioner 5-gallon tin cans for its use in the sale and distribution of its petroleum products. By virtue of a service agreement, Caltex manufactured, supplied and filled cans and drums in its factory for Tidewater Associated Oil Company, Caltex being compensated for its costs and expenses plus 3% of such cost and expense. The petitioner imposed a municipal license tax on tin can factories on the basis of their "maximum annual output capacity." The issue was whether respondent's tin can factory was taxable as a separate business. The respondent conceded that it was liable for the license tax with respect to the tin cans delivered to Tidewater, but it contested the tax as regards the tin cans used in its own business.

Sustaining the respondent, the Supreme Court ruled that the tin cans Caltex manufactured for purposes of its own business did not fall within the coverage of the tax ordinance. By maintaining the tin can factory, the respondent assured itself of a continuous supply of containers for its products in liquid form. The containers were part of the products sold. For the tin cans produced for Tidewater, the license was correctly assessed. But for those produced by respondent for its own use, no license was due, because the manufacture thereof was "incidental to and tended to better accomplish its main business." It was noted that of the tin cans produced for the period 1950-1955, 85.63% were used by the respondent and 14.36% delivered to Tidewater.[100]

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[98] Standard Vacuum Oil Company v. Antigua, 96 Phil. 909 (1955); see also Manila Press, Inc. v. Sarmiento, 99 Phil. 31 (1956); City of Manila v. Fortune Enterprises, Inc., G.R. No. 14096, July 26, 1960, 60 O.G. 6213 (Sept., 1964).

[99] G.R. No. 21853, February 26, 1968.

[100] The Court cited the cases of Standard Vacuum Oil Co. v. Antigua, *supra*, note 98, involving the same ordinance of Opon; City of Manila v. Fortune Enterprises, Inc. *supra*, note 98, where it was held that the business of auto supplies, battery charging and upholstery is part of the main business of automobile repairing and is therefore not taxable separately; Manila Press, Inc. v. Sarmiento, *supra*, note 99, where it was ruled that stationeries and office supplies on which the customers' names were printed were subject to the tax on the printing business, but the same stationeries and office supplies on which no printing work was performed were considered subject to the retailer's tax.

The designation given to it by the municipal authorities does not decide the nature of an imposition, as held in the case of *Victorias Milling Co., Inc. v. The Municipality of Victorias.*[101] The determining factors are the purpose and effect of the imposition. The case involved the validity of an ordinance amending two previous ordinances by increasing the rates of "municipal license taxes on persons, firms and corporations operating sugar central or engaged in the manufacture of centrifugal sugar" or "operating sugar refinery mills." The ordinance prescribed a graduated schedule up to an output capacity of 1,500,000 piculs or more, for which the annual tax was ₱40,000, in the case of sugar centrals. The tax on sugar refinery mills was also calibrated with similar rates.

In an action brought by the petitioner contesting the validity of the ordinance, the court *a quo* held that the amounts set forth in the ordinance exceeded the cost of licensing, regulating and surveillance, and that the defendant could not impose a tax for revenue in the guise of a police or regulatory measure. Reversing the lower court, the Supreme Court declared that Municipal Resolution No. 60, adopted in conjunction with the assailed ordinance made it clear that the said ordinance was promulgated not in the exercise of the municipality's regulatory power but as a revenue measure — a tax on occupation or business. The authority to impose such tax is backed up by the express grant of power in section 1 of Commonwealth Act 472. Besides, the Court added, the term "license tax" has no fixed meaning. It is often used indiscriminately to designate impositions exacted for the exercise of various privileges. It does not refer solely to a license for regulation. In many instances, it refers to "revenue-raising exactions on privileges or activities." On the other hand, *license fees* are commonly called taxes. But legally speaking, the latter are "for the purpose of raising revenues in contrast to the former which are imposed in the exercise of the police power for purposes of regulation. Furthermore, the very big amount of maximum annual tax set forth in the ordinance would readily convince one that the tax was really a revenue tax.

In the case under consideration, the plaintiff also argued that the National Government had preempted the field of taxation of sugar centrals and sugar refineries by virtue of section 189 of the Internal Revenue Code which subjects proprietors or operators of sugar centrals or sugar refineries to percentage tax. According to the Court the implausibility of the argument is readily apparent from the fact that the ordinance does not deal with a percentage tax. Preemption in the matter of taxation simply refers to an instance where the national

[101] G.R. No. 21183, September 27, 1968.

government elects to tax a particular area, impliedly withholding from the local government the delegated power to tax the same field. Conversely, should Congress allow municipal corporations to cover fields of taxation it already occupies, then the doctrine of preemption does not apply. In the case at bar, section 4(1) of the Commonwealth Act 472 clearly and specifically allows municipal councils to tax persons engaged in "the same businesses or occupation" on which "fixed internal revenue privilege taxes" are "regularly imposed by the National Government," with certain exceptions specified in section 3. The ordinance does not fall within the exceptions.

It should be noted that in the *Victorias Milling Company* case, the local government was expressly granted by law the power to tax for revenue as regards the subject involved. If there had been no such delegation, the power to tax would not exist; it cannot be justified on the basis of the local government's police or regulatory power. Thus in *City of Naga v. Court of Appeals,*[102] the Supreme Court declared the petitioner's ordinance levying on all establishments whose business includes the corking and capping of bottles, operating within its territory, a municipal tax of 1/48 of a centavo for every bottle so corked, capped or stoppered, as void and invalid. Section 15(kk) of Republic Act 305 (the charter of the City of Naga), on which the City relied as the source of its taxing power, was found irrelevant to the ordinance under consideration, which is an exercise of the power of taxation, the purpose of which is to raise funds for the general operation of the government and is distinct and separate from the police power, which in turn, does not and cannot possibly permit the enactment of said ordinance. Moreover, since the legality of the ordinance is dependent upon the City's powers at the time of its enactment, Republic Act 2264 (the Local Autonomy Act) did not remove the infirmity of the ordinance, said law not being retroactive in effect.

On the other hand, in *City of Baguio v. De Leon,*[103] there was no question about the authority of the City to levy and collect a tax on real estate dealers. The source of authority for the challenged ordinance was Republic Act 329, amending the city charter of Baguio (section 2553, paragraph (c), Revised Administrative Code) and adding to its power to license the power to levy a tax for purposes of revenue. Thus the ordinance could not be considered *ultra vires* whether its purpose be to levy a tax or impose a license fee. The terminology used was of no consequence.

[102] G.R. No. 24954, August 14, 1968.
[103] G.R. No. 24756, October 31, 1968.

(b) Export tax —

In a 1965 decision, *Nin Bay Mining Co. v. Municipality of Roxas*,[104] it was held that the prohibition to levy an export tax by a municipal council under section 2287 of the Revised Administrative Code was repealed by section 2 of Republic Act 2264, effective June 19, 1959. Aware of the transcendental effects that municipal export taxes will have on the national economy, due to said section 2 of Republic Act 2264, the Supreme Court pointed out that there was no other alternative until Congress acted to provide remedial measures to forestall any unfavorable results.

In *Ormoc Sugar Co., Inc. v. The Treasurer of Ormoc City*,[105] the Supreme Court followed the doctrine in *Nin Bay Mining Company* and did not find objectionable on this ground the imposition by the City of Ormoc of a municipal tax on the production of centrifugal sugar in an amount "equivalent to 1% per export sale to the United States and other foreign countries."

However, in a subsequent companion case to the foregoing, *Ormoc Sugar Cane Planters Association, Inc. v. Municipal Board of Ormoc City*,[106] the Supreme Court ruled that the taxing power granted to chartered cities, municipalities and municipal districts in section 2 of Republic Act 2264 was amended on June 19, 1965 by Republic Act 4497, by excepting from the grant of authority to tax of local governments the following: "Taxes, fees or levies, of any kind, which in effect impose a burden on exports of Philippine finished, manufactured or processed products of Philippine cottage industries." The aforequoted provision did not exist in Republic Act 2264 before it was amended. The amendment is clearly a denial of the power to impose export taxes, and in effect repeals the Ormoc City Ordinance, subject of this case.

(c) Import duty —

In *Pepsi-Cola Bottling Co. of the Philippines, Inc. v. City of Butuan*,[107] the petitioner company, which bottled its soft drinks in Cebu City and shipped them to its Butuan City warehouse for distribution in the City of Butuan and all municipalities of Agusan, protested against the tax imposed by Ordinance No. 110, as amended, of the respondent City. The tax was levied upon "any agent and/or consignee of any person, association, partnership, company or corporation engaged in selling...

[104] G.R. No. 20125, July 20, 1965.
[105] G.R. No. 23794, February 17, 1968.
[106] G.R. No. 23793, February 23, 1968.
[107] G.R. No. 22814, August 28, 1968.

soft drinks or carbonated drinks." Analyzing the reach of the tax ordinance, the Supreme Court determined the imposition to be in the nature of an import duty. Said it:

> ". . . merchants engaged in the sale of soft drinks or carbonated drinks, are *not* subject to the tax, *unless they are agents and/or consignees of another dealer,* who, in the very nature of things, must be one engaged in business *outside* the City.... When we consider also, that the tax 'shall be based and computed from the *cargo manifest or bill of lading* . . . showing the number of cases' — *not* sold — but *received* by the taxpayer, the intention to limit the application of the ordinance to soft drinks and carbonated drinks brought into the City from outside thereof becomes apparent. Viewed from this angle, the tax partakes of the nature of an import duty, which is beyond the defendant's authority to impose by express provision of law."

(d) Tax on tenement houses —

In an earlier case,[108] the Supreme Court ruled that an ordinance of the City of Iloilo imposing a license tax on tenement houses was *ultra vires,* it not appearing that the power to impose such a tax was one among those clearly and expressly granted to the City of Iloilo by its Charter. With the passage of the Local Autonomy Act, Republic Act 2264, the City of Iloilo, obviously believing that it had thereby acquired the authority to enact a similar ordinance adopted an "ordinance imposing municipal license tax on persons engaged in the business of operating tenement houses." This time, in *Villanueva v. City of Iloilo,*[109] the ordinance was sustained as a valid enactment.

It is now settled, explained the Court, that Republic Act 2264 confers on local governments broad taxing authority which extends to almost "everything, excepting those which are mentioned therein," provided that the tax so levied is for "public purposes, (orders) just and uniform," and does not transgress any constitutional provision or is not repugnant to a controlling statute. The principal argument of the plaintiff for assailing the validity of the ordinance was that the tax involved a real estate tax which made the ordinance *ultra vires* as it imposed a levy in excess of the one per centum real estate tax allowable under the charter of Iloilo. The tax imposed by the ordinance in question does not possess the attributes of a real estate tax. It is not a tax on the land on which the tenement houses are erected, although both land and tenement houses may belong to the same owner. The tax is not a fixed proportion of the assessed value of the tenement houses, and does not require the intervention of assessors or appraisers. It is not payable at a designated time or date, and is not enforceable

[108] City of Iloilo v. Remedios Sian Villanueva and Eusebio Villanueva. G.R. No. 12695, March 23, 1959, 58 O.G. 7216 (Oct., 1962).
[109] G.R. No. 26521, December 28, 1968.

against the tenement houses either by sale or distraint. On the contrary, it is plain from the context of the ordinance that the intention is to impose a license tax on the operation of tenement houses, which is a form of business or calling. The ordinance, in both in its title and body, designates the tax imposed as a "municipal licence tax" which, by itself, means an "imposition or exaction on the right to use or dispose of property, to pursue a business, occupation, or calling, or to exercise a privilege." The character of a tax is not to be fixed by any isolated words that may be used in the statute, but such words must be taken in the connection in which they are used, and the true character is to be deduced from the nature and essence of the subject. Called either as a tenement tax or an apartment tax, the tax in question is not among the exceptions listed in section 2 of the Local Autonomy Act; on the contrary, the tax finds authority in section 2 of said Act which provides that chartered cities have the authority to impose municipal license taxes or fees upon persons engaged in any business or calling, or exercising privileges within their respective territories, and otherwise to levy for public purposes, just and uniform taxes, licenses, or fees.

3. *Assailing municipal tax on constitutional grounds*

(a) Principle of equal protection and uniformity

In the *Ormoc Sugar Co., Inc.* case[110] the city ordinance which imposed "on any and all productions of centrifugal sugar milled at the Ormoc Sugar Co., Inc., in Ormoc City, a municipal tax equivalent to 1% per export sale", was declared void by the Supreme Court for being discriminatory. It taxed only centrifugal sugar produced and exported by the petitioner and none other. It could not be justified on the ground that petitioner was the only sugar central in Ormoc. The taxing ordinance should not be singular and exclusive as to exclude any subsequently established sugar central of the same class as petitioner, from the coverage of the tax. As it was, even if later, a similar company were set up, it could not be subject to the tax because the ordinance expressly pointed only to Ormoc Sugar Company, Inc. as the entity to be levied upon.

So if in terms the ordinance would apply to *any* sugar central or refinery which may happen to operate in the municipality, the fact that the petitioner was the only operator of a sugar central or refinery did not make the ordinance discriminatory, the Supreme Court ruled in the *Victorias Milling Co., Inc.* case.[111]

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[110] See *supra*, note 105

[111] See *supra*, note 101.

In the *Villanueva v. City of Iloilo* case,[112] it was held also that the uniformity rule was not violated by the fact that owners of other property were subject to real estate and income taxes only while tenement house owners were subject additionally to license tax under the questioned ordinance; nor by the fact that other cities do not impose similar tax on tenement owners.

In *Pepsi-Cola Bottling Co. of the Philippines v. City of Butuan,*[113] the second ground on which the Supreme Court annulled the city ordinance was the discriminatory nature and effect of the ordinance. Only sales by "agents or consignees" of *outside* dealers would be subject to the Tax. Sales of dealers, not acting for or on behalf of other merchants, regardless of the volume of their sales, and even if the same exceeded those made by said agents or consignees of producers or merchants established outside the City of Butuan, would be exempt from the disputed tax. There was no reasonable classification made by the ordinance.

(b) Double taxation —

Again, in *Villanueva v. City of Iloilo,* the Supreme Court held that while it was true that the plaintiffs were taxable under the Internal Revenue Code as real estate dealers, and still taxable under the ordinance in question, the argument against double taxation may not be invoked. The same tax may be imposed by the National Government as well as by the local government. There is nothing inherently obnoxious in the exaction of license fees or taxes with respect to the same occupation, calling or activity by both the State and a political subdivision thereof.

At all events, there is no constitutional prohibition against double taxation in the Philippines. It is something not favored, but is permissible, provided some other constitutional requirement is not thereby violated, such as the requirement that taxes must be uniform.[114]

4. *Tax administration and procedure*

(a) Jurisdiction in cases involving constitutional issue —

In the case of *City of Baguio v. De Leon,*[115] involving a suit for the collection of real estate dealer's tax in the amount of ₱300.00,

[112] *Supra,* note 109.
[113] *Supra,* note 107.
[114] To the same effect are the cases of Victorias Milling Co., Inc. v. Victorias, Negros Occidental, *supra,* note 101; City of Baguio v. De Leon, *supra,* note 103.
[115] See *supra,* note 103.

the defendant maintained that it was the Court of First Instance and not the City Court that had jurisdiction over the subject matter inasmuch as the principal issue was the constitutionality of the challenged ordinance. Rejecting the contention, the Supreme Court said that what confers jurisdiction is the amount set forth in the complaint and the sum sought to be recovered by the City was clearly within the jurisdiction of the City Court. The City Court could rely on the presumption of validity of the ordinance and the mere fact that in the answer to the complaint a constitutional question was raised did not suffice to oust the City Court of its jurisdiction. The suit remained one for collection, the lack of validity being only a defense to such an attempt at recovery.

It was also held in this case that the city treasurer may commence suit to recover city taxes without the express consent of the mayor. It is presumed that the action taken by the treasurer carries with it the approval of the mayor unless repudiated or set aside. After all, the city treasurer is called upon by law to see to it that the city revenues are collected.

(b) Prescriptive period for recovery of municipal taxes —

In the case of *Municipality of Opon (now Lapu-Lapu City) v. Caltex (Phil.) Inc.*,[116] the rule was reiterated that the period of prescription for an action to recover municipal license taxes is six years under article 1145 (2) of the Civil Code. The two-year prescriptive period in section 306 of the Tax Code, relied upon by the municipality finds no application for this provision clearly refers exclusively to claims for refund of national internal revenue taxes erroneously or illegally collected and not to a refund of local or municipal license fees illegally collected.

(c) Enforcement by distraint and levy —

In *Cebu Portland Cement Company v. Municipality of Naga*,[117] distraint and levy of 100,000 cement bags for the purpose of satisfying deficiency municipal license taxes was made. In the letter of the defendant of June 26, 1961, plaintiff was given a period of ten days from receipt within which it could pay, failure to do so being the occasion for the distraint of its property. Plaintiff complained that the ten-day period was not allowed to lapse, the distraint having taken place on July 6, 1961. In answer the Supreme Court pointed out that the law explicitly authorized the municipal treasurer to seize

[116] See *supra*, note 99.
[117] G.R. Nos. 24116-17, August 22, 1968.

and distrain any personal property of the taxpayer upon failure to pay the same at the time required. There was such a failure on the part of the plaintiff to pay the municipal tax at the time required. The power of the municipal treasurer in accordance with the law therefore came into play. Whatever might have been set forth in the letter of the municipal treasurer could not change or amend the law. It has to be enforced as written.

The subsequent sale of the distrained cement was likewise assailed on the ground that it was not until January 16, 1962 that plaintiff was notified that the public auction sale was to take place on January 29, 1962. Under section 2305 of the Revised Administrative Code, the sale of distrained property cannot take place "less than twenty days after notice to the owner or possessor of the property." The Court observed that there was substantial compliance. From the time that plaintiff was notified of the distraint on July 6, 1961 up to the date of sale on January 30, 1962, more than twenty days have elapsed. If the sale did not take place, as advertised, on July 27, 1961 but only on January 30, 1962, it was due to the requests for deferment made by the plaintiff which unduly delayed the proceedings for collection of the tax.

The point was further made that the auction sale took place not on January 29, 1962, as stated in the notice of sale, but on the next day, January 30, 1962. The finding of the lower court, however, was otherwise. The plaintiff having directly appealed to the Supreme Court, he was deemed to have accepted as conclusive what the lower court found as established by the evidence, only questions of law being brought to the Supreme Court for review. It is the established rule that when a party appeals directly to the Supreme Court, he is deemed to have waived the right to dispute any finding of fact made by the lower court.