TAXATION

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The Court of Tax Appeals has been functioning more than sixteen years. During all that time it has spurred the evolution of what may truly be called tax jurisprudence in this country as shown by the number of Supreme Court cases originating from it, compared with "tax cases" decided before its creation by Republic Act No. 1125. It has also served as a catalyst in spawning administrative tax and customs decisions eventually considered by our highest court. Year in and year out, we discern this growth. 1970, while not a spectacular, was not exactly a dormant, year.

This survey follows the traditional classification of taxes by subject. In a few instances, however, not the tax but some other point is the decisive issue before the court, like jurisdiction, accounting practice, etc. In these instances, we have disregarded the classification of the tax and confined ourselves to the legal issue decided.

I. INCOME TAX

Partnerships

Among the more vexing problems plaguing tax practitioners is the taxation of partnerships. This is caused by the different tax treatments accorded registered general co-partnerships and those unregistered. For example, during the year of formation, when does the tax liability of the general partnership begin, on the date of registration of its articles or on the first day of the taxable year? If the unregistered general co-partnership is taxed as a corporation, are its members simultaneously taxed on their distributive shares though no actual profit distributions were made? In 1969, the Court of Tax Appeals answered the latter question in the negative, for, under the facts of that case, no distributions of profit were made. The government did not appeal. During the year under review, 1970, the Supreme Court finally laid out the ground rules and answered the two questions posited above: (1) the "status-at-the-end-of-the-taxable year" determines the tax liability of the registered general co-partnership for the entire year, and (2) the members of an unregistered partnership are subject to the income tax on their distributive shares, whether or not any distributions of profits were made, while the partnership itself is liable for

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payment of the corporate income tax. (2) Albeit the second rule is mere *obiter dictum*, it seems to overrule *J.P. Velez Coal Mines.* [1]

In the *Ledesma* case, [2] petitioner and his sisters and a brother-in-law organized a partnership on July 11, 1949, registering the articles in the Register of Deeds on July 14, 1949. The articles provided that the agreement was retroactive to January 1 of that year.

The partners in 1949 declared their distributive shares in their individual income tax returns and did not pay any corporate income tax for the partnership under the impression that Section 24, Tax Code, exempted registered general co-partnerships from the corporate income tax. The Commissioner of Internal Revenue disagreed and in 1959 issued deficiency income tax against the partnership for the period before its registration on the theory that from January 1 until its registration it was an unregistered partnership taxable as a corporation.

The Supreme Court affirmed the decision of the Court of Tax Appeals holding that it is the status of the partnership at the end of the taxable year that determines whether it is registered or not. Since the partnership in this case was registered as of December 31, 1949, that was its status for that entire taxable year. As such, it was not taxable as a corporation, pursuant to the provisions of Section 24, Tax Code.

In arriving at this conclusion, the lower court was guided by rulings issued by the Commissioner of Internal Revenue since 1924, applying the rule of status-at-the-end-of-the-taxable year, citing BIR Ruling No. 30, September 4, 1924, and BIR Rulings interpreting Section 23, Tax Code, on personal and additional exemptions. The lower court observed that the section implemented by BIR Ruling No. 30, September 4, 1924 was re-enacted as Section 24 of the National Internal Revenue Code. So, said the lower court, it is

> "'reasonable to suppose that a long standing administrative practice, if contrary to the intention of the legislature, would be specifically corrected by it. (1 USTC, Par. 259; see also 1 USTC, Par. 293). That Congress merely reenacted the old law in the face of the long continued practice of the Bureau of Internal Revenue which it published in "Official Gazette is a strong indication that such practice has received congressional approval....'" (Reproduced in the Supreme Court decision, *idem.*, p. 107).

Then the Supreme Court proceeded to give the purpose of the law requiring registration of partnerships.

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[1] J. P. Velez Coal Mines v. Commissioner of Internal Revenue, C.T.A. Case No. 1185, February 27, 1967, 12 PHIL. TAX J. 557 (Sept., 1967).

[2] Commissioner of Internal Revenue v. Ledesma, G.R. No. 17509, January 30, 1970, 31 SCRA 95 (1970).

". . . . The policy of the law is to encourage persons doing business under a partnership agreement to have the partnership agreement, or the articles of co-partnership, registered in the mercantile registry, so that the public may know who the real partners of the partnership, the interest or contribution of each partner in the capital stock, the proportionate share of each partner in the profits, and the earnings or salaries of the partner or partners who render service for the partnership. (Tan Senguan & Co. v. Coll. of Internal Revenue, 101 Phil. 247.) It is precisely in the share of the profits and the salaries or wages that the government is interested in, because it is on these incomes that the assessment of the income tax is based. It can happen that the profits realized by an unregistered partnership may be distributed to other persons in addition to those who appear to the public as partners. The government may not be able to trace exactly to whom the profits of an unregistered partnership go, nor can the government determine the precise participation of the apparent partners in the profits of the partnership. *It is for this reason that the government imposes a corporate income tax against an unregistered partnership as an entity, and an individual income tax against the apparent members thereof.* But once the partnership is duly registered, the names of all the partners are known, the proportional interest of the partners in the business of the partnership is known, and the government can very well assess the income tax on the respective income of the partners whose names appear in the articles of co-partnership... If it can be ascertained that the profits of the partnership have actually been given, or credited, to the partners, then there is no reason why the partnership should be made to pay a corporate income tax on the profits realized by the partnership, and at the same time assess an income tax on the income that the partners had received from the partnership. (Idem, 108-109 Underscoring supplied to emphasize the *obiter dictum* observed earlier, overruling the rule in J.P. Velez Coal Mines v. Comm., *supra.*)

Against the argument that Section 24, Tax Code, should be construed strictly against the taxpayer for it is an exemption statute, the Supreme Court answered that it is a classification statute and should be construed liberally. It stated:

"The provision of Section 24 of the Tax Code excluding 'registered general co-partnership' from the payment of corporate income tax is not an exemption clause but a classification clause which must be construed liberally in favor of the taxpayer." (*Idem.*, p. 111.)

The Supreme Court best summarizes its position as follows:

"The exclusion of a registered partnership from the entities subject to the payment of corporate income tax under Section 24 of the Tax Code should be made to cover the entire taxable year, regardless of whether the registration takes place at the middle, or towards the last days, of the taxable year. This is so because after all, the taxable status of the taxpayer, for purposes of the payment of the income tax, is determined as of the end of the taxable year, and the income tax is collected after the taxable year. Since it is the policy of the government to encourage a partnership to register its articles of co-partnership in order that the government can

better ascertain the profits of the partnership and the distribution of said profits among the partners, this benefit of exclusion from paying corporate income tax arising from registration should be liberally extended to registered, or registering, partnerships in order that the purpose of the government may be attained." (*Idem*, pp. 110-111.)

Delinquency interest—starting date

Delinquency interest of 1% a month is imposed by Section 51(e), Tax Code, for non-payment of the amount of tax shown in the return. Similarly, where a deficiency assessment is not paid in full within 30 days from date of notice and demand, said 1% monthly interest is also imposed, together with a 5% surcharge of the amount of tax unpaid. In many instances, however, the deficiency assessment is contested in the courts. When does the monthly interest of 1% begin—from the date of such deficiency notice and demand or from the date of finality of the court decision?

There had been decisions imposing the delinquency interest from date of finality of the judgment, contrary to the position of the Bureau of Internal Revenue that Section 51(e) provides that the interest should start from the date of the notice and demand.[3] At last, in 1970, the Supreme Court decided the matter sustaining the theory of the Bureau of Internal Revenue.

In the case of *Republic of the Philippines v. Philippine Bank of Commerce,*[4] suit was brought in the Court of First Instance to collect from defendant bank an unpaid deficiency income tax totalling ₱116,394.00. The assessment notice and demand was dated February 14, 1956 and required the bank to pay the above-mentioned tax not later than February 29, 1956. The bank did not pay. Instead, it spiritedly contested the assessment, causing the government to sue for collection on March 21, 1957. The bank paid the principal tax on April 8, 1957, but refused to pay the 1% monthly interest for the 13 months beginning March 1, 1956 to April 8, 1957 when it paid.

The lower court ruled for the government, but reduced the 1% monthly interest to only six months. It started counting from the dates when the Supreme Court promulgated the decisions in the cases of *Cu Unjieng Sons, Inc. v. Board of Tax Appeals*[5] and *Hilado v. Collector of Internal Revenue*[6] respectively. The government appealed to the Supreme Court on pure question of law. Held, for the government. Interpreting Section 51(e), the Court said:

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[3] Limpan Investment Corporation v. Commissioner, C.T.A., Case No. 1358, September 20, 1969 and C.T.A. Case No. 1397, Dec. 11, 1961.
[4] G.R. No. 20951, July 31, 1970, 34 SCRA 361 (1970).
[5] G.R. No. 6296, September 29, 1956, 100 Phil. 1 (1956).
[6] G.R. No. 9408, October 31, 1956, 100 Phil. 288 (1956).

> "The above legal provision makes no distinctions nor does it establish exceptions. It directs the collection of the surcharge and interest at the stated rate upon any sum or sums due and unpaid after the dates prescribed in subsections (b), (c) and (d) of the Act for the payment of the amounts due. The provision therefore is mandatory in case of delinquency. This is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature—they are compensation to the State for the delay in payment, or for the concomittant use of the funds by the taxpayer beyond the date he is supposed to have paid them to the State" (Castro v. Collector, etc., Resolution on Motion for Reconsideration, G.R. No. L-12174, December 28, 1962.) (*Idem.*, p. 369.)

The above ruling was adopted by the Supreme Court in the cases of *Commissioner of Internal Revenue v. Limpan Investment Corporation*[7] originating from the Court of Tax Appeals. The 1% monthly interest and 5% delinquency surcharge were imposed starting from the date of the assessment notice and demand to pay the deficiency tax.

II. PERCENTAGE AND OTHER BUSINESS TAXES

Compensating tax rate applicable

This tax is imposed under Section 190, Tax Code at rates and on articles mentioned in Sections 184 to 186, same Code. Unlike the tax imposed by these three sections, which is on the original sale by the manufacturer or producer or on the importation for local sale of goods, the compensating tax is imposed on imported goods for use locally. The tax is not on the mere act of importing. Thus, machines imported for lease in the Philippines are subject to the compensating tax.[8]

The sales tax classifies goods into luxuries (Section 184), semi-luxuries (Section 185) and necessities (Section 186) and respectively taxes them at 50%, 30% and 7% of the selling price. On August 24, 1956, Republic Act No. 1612 amended Section 184, Tax Code by taxing importations of completely-knocked-down (CKD) spare parts and accessories for the assembly of automobiles at 7% instead of 50%. The purpose was to give more viability to the growing automobile-assembly industry and to save dollars that otherwise might be spent in importing whole automobiles. Alert taxpayers including some who were not engaged in the business of manufacturing or assembling automobiles imported these spare parts and accessories.

For a while, some of them successfully invoked the payment of the lower rate of 7%. With this in mind, an operator of taxicabs imported

[7] G.R. Nos. 28571 & 28644, decided July 31, 1970, same date as that of the *Philippine Bank of Commerce* case.

[8] International Business Machine Corporation v. Collector of Internal Revenue, 98 Phil. 595 (1956).

fifteen units in completely-knocked-down parts and accessories and to assemble these here.[9] On the theory that only importers legitimately engaged in the business of automobile assembly were entitled to the lower rate of 7%, the government issued deficiency compensating tax computed at 50% rate, instead of the 7% paid by the importer to release the goods.

The Court of Tax Appeals and the Supreme Court upheld the deficiency assessment. Against the argument that the amendment did not distinguish between importers who were and those who were not manufacturers or assemblers, the Supreme Court pointed out the contrary language of the statute expressly limiting the 7% rate to "parts and accessories of automobiles imported as replacements or as completely-knocked-down parts for the assembly of automobiles x x x". Moreover, said the court, Section 186 imposes the tax on the " 'manufacturer or producer'. In other words, it is not intended for the end-user or consumer."

It was also contended that previous similar importation had been uniformly subjected to the 7% rate pursuant to a BIR Circular. The Supreme Court brushed this aside by reminding that errors committed by public officers can not be set up as estoppel against the Government or bar its future action in accordance with law (citing numerous cases).

"Tax-free" product defined

In June, 1957, Republic Act No. 2025 added what is now Section 186-A to the Tax Code, as follows:

> "Sec. 186-A. Whenever a tax-free product is utilized in the manufacture of any article, in the determination of the value of such finished article, the value of such tax-free product shall be deducted."

In July, 1957, the Commissioner of Internal Revenue interpreted this statute to apply only to raw materials purchased from tax-exempt industries.[10] On the basis of this circular, the Commissioner disallowed the deduction by a manufacturer of flour of the cost of imported wheat grains for purposes of determining the sales tax on the flour.[11] The manufacturer enjoyed exemption under Republic Act No. 901 starting from January 1957, from fixed and privileged taxes on business, percentage tax on manufactured products and advance sales tax on raw materials and supplies used exclusively in the production of flour. In 1958, it imported a quantity of wheat grains to be manufactured into flour. The portion of that importation not used in 1958 was manufactured into flour in 1959. In computing its sales tax

[9] Zamora v. Court of Tax Appeals, G.R. No. 23272, November 26, 1970, 36 SCRA 77 (1970).

[10] General Circular No. V-252, July 15, 1957.

[11] Republic Flour Mills, Inc. v. Commissioner, G.R. No. 25602, February 18, 1970, 31 SCRA 520 (1970).

on flour manufactured in 1959, the manufacturer deducted the cost of the wheat grain imported tax-free in 1958.

In disallowing the deduction, the respondent Commissioner contended that in 1959 the wheat grains ceased to be tax-free because in that year the manufacture was already subject to the payment of 10% of the tax on raw materials, under its diminishing exemption.

On the other hand, the manufacturer invoked Section 186-A above. The wheat grains were imported tax-free and they did not lose this character in 1959. Respondent Commissioner at this point invoked General Circular No. V-252, limiting the term "tax-free" products to those bought from tax exempt industries.

The Supreme Court rejected this interpretation by stating that Section 186-A, Tax Code expressly construed "the value of tax-free products to be a deductible item from the gross sales of the finished goods manufactured out of the same". Continued the Court:

> "Cast against this background, we agree with the petitioner that there is actually no cause here calling for an administrative definition or interpretation of Section 186-A. For no reason exists to read into the provision a qualification that is not there, nor to give to the phrase "tax-free a meaning other than what it ordinarily and commonly conveys—a material or article exempted from payment of tax."
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> "It is true that in the construction of tax statutes tax exemption (and deductions are of this nature) are not favored in the law, and are construed in *strictissimi juris* against the taxpayer (numerous citations made). However, it is equally a recognized principle that where the provision of the law is clear and unambiguous, so that there is no occasion for the court's seeking the legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction. In this case, we find the provision of Section 186-A — 'whenever, a *tax-free product* is utilized, etc. . . .' all encompassing to comprehend *tax-free* raw materials, even if imported. Where the law provided no qualification for granting of the privilege, the court is not at liberty to supply any." (*Idem*, pp. 526-527.)

Refund of taxes legally paid—prescriptive period

The question of when the prescriptive period under Section 306, Tax Code, starts to be counted when the tax is paid legally and correctly has already been decided by the Supreme Court in the cases of *Commissioner of Internal Revenue v. Insular Lumber Co.* [12] and *Commissioner of Internal Revenue v. Victorias Milling Co., Inc.* [13] The rule in these two cases is that the two-year prescriptive period starts from the date of payment of the tax sought to be refunded, if erroneously or illegally paid. This is under the

[12] G.R. No. 24221, December 11, 1967, 21 SCRA 1237 (1967).
[13] G.R. No. 21171, January 31, 1967.

provision of Section 306, Tax Code. If the tax was originally paid correctly or legally, but a supervening event rendered the payment erroneous or incorrect, then the two-year period starts from the occurrence of that supervening event. The cited cases reversed the prevailing rule enunciated by the Supreme Court in *Muller & Phipps (Manila), Ltd. v. The Collector of Internal Revenue.*[14] In the case of *Muller & Phipps*, the prescriptive period in case of taxes legally or correctly paid was governed by Section 7, Republic Act No. 1125, creating the Court of Tax Appeals. If the petition was filed with the Tax Court within 30 days from the adverse decision of the respondent denying refund, then the Tax Court had jurisdiction, though more than 2 years had elapsed.

In the case of *Commissioner v. National Power Corporation,*[15] the Supreme Court merely followed the case of *Insular Lumber and Victorias Milling.*[16] National Power Corporation, an entity exempt from taxes, imported five cases containing diamond drill bits, non-coring diamond drill bits, reaming shells and parts for drilling machines, through its agent, the Philippine Engineer's Syndicate, Inc., called PES, a non-exempt corporation. On May 5, 1955, PES paid advance sales tax, customs duties and surcharge under protest. On September 17, 1956, the National Power Corporation filed a claim for refund with the Bureau of Customs. On October 15, 1957, the Collector of Customs decided that the PES was a mere agent of the National Power Corporation and that the importations belonged to National Power Corporation. He therefore found the importations to be free from all taxes, duties and imposts in accordance with Republic Act No. 358, the tax-exemption statute that amended the charter of National Power Corporation. The Bureau of Customs thereupon refunded the customs duties and suggested that National Power Corporation file the claim for advance sales tax with the Commissioner of Internal Revenue. A claim was therefore filed with the latter on January 13, 1958. He denied it and the matter was elevated to the Tax Court on July 11, 1958. The lower court reversed the Commissioner of Internal Revenue who appealed to the Supreme Court, which held for the National Power Corporation, affirming the decision of the Tax Court, on the authority of the *Insular Lumber* case.[17] Since the advance sales tax in question was originally collected legally and the question of the illegality became known only on October 15, 1957, both the claims with the Commissioner of Internal Revenue and with the Tax Court were made within the two years prescribed by Section 306, Tax Code. National Power Corporation was therefore entitled to the refund.

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[14] 103 Phil. 145, 149 (1958).
[15] G.R. No. 18874, January 30, 1970, 31 SCRA 112 (1970).
[16] *Supra*, note 13.
[17] *Supra*, note 12.

Rock-quarry subject to sales tax

The Tax Code in Section 188(c) exempts from the sales tax sales of minerals and mineral products made by the lessee, concessionaire or owner of the mineral land. The reason is that they are already subject to special taxation at rates considered adequate as a means of taxing the mining industry. A decisive question therefore is whether or not the product sold is "mineral" or "mineral product".

This question arose in the case of *Philam Mining, Inc. v. Court of Tax Appeals.* [18]

In that case, petitioner is a concessionaire/lessee and operator of a rock-quarry. It crushed the rocks quarried into different grades and classifications for sale to construction contractors. On these sales, petitioner paid the 7% sales tax that it asked be refunded on the ground that it sold minerals exempt from sales tax under Section 188(c), Tax Code.

Held, crushed rock is not a mineral as defined by Section 7, Commonwealth Act No. 137, the Mining Act. Hence, its sale is subject to the sales tax as held by the Court of Tax Appeals. In arriving at this conclusion, the lower court reasoned as follows:

> "Section 188(c) of the Revenue Code exempts from the *sales tax* sales of minerals and mineral products if made by the lessee, concessionaire or owner of the mineral land from which removed. The word 'mineral' means all inorganic substances found in nature whether in solid, liquid, gaseous, or any intermediate state. The term 'mineral products' means things produced by the lessee, concessionaire or owner of mineral lands, at least eighty per cent of which things must be minerals extracted by such lessee, concessionaire, or owner of mineral lands. (Sec. 346, Rev. Code). Section 7 of the Mining Act defines 'minerals as including all inorganic substances found in nature in solid, liquid, gaseous or any intermediate state' *but does not include* 'soil which supports organic life . . ., *gravel, sand, and stone which are used for building or construction purposes.*"
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> "From the foregoing definitions of 'minerals' and 'mineral products' it appears clear that crushed rocks for use in building and construction purposes, such as those produced and sold by petitioner, are not 'minerals' or 'mineral products' within the meaning of Section 188(c) of the Revenue Code, because they are not minerals or mineral products under the Mining Act and are not subject to the mining tax. The records show that the quarry from which the rocks were obtained by petitioner was not registered with the Mining Recorder as a mining claim and *no mining tax was paid on such rocks.*
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> "The minerals and mineral products which are exempt from the sales tax under Section 188(c) of the Revenue Code are those which are obtained from mineral lands and are subject to the mining tax provided in Title VII of the Revenue Code. The reason for the exemption is that the

[18] G.R. No. 23188, August 31, 1970, 34 SCRA 498 (1970).

mining taxes 'appear to be adequate as means of taxing the mining industry.'" (CTA Case No. 1160, reproduced in *Philam Mining, Inc. v. CTA, Idem.*)

Commercial broker—contract of sale versus agency to sell

In defining "commercial broker", Section 194(t), Tax Code, includes

> "all persons, other than importers, manufacturers, producers, or *bona fide* employees, who, for compensation or profit, sell or bring about sales or purchases of merchandise for other persons, or bring proposed buyers and sellers together...."

The desire of brand suppliers to enlarge dealer outlets yet retaining title to the goods for security purposes, has often blurred the application of the foregoing definition in relation to the tax on commercial brokers. More and more, reliance on judicial interpretation and construction has become necessary with the growing intricacies of goods distribution.

In 1970, the Supreme Court once more fixed a guidepost in the case of *Commissioner of Internal Revenue v. Constantino.*[19] Taxpayer is a distributor of the products of International Harvester, Macleod, Inc. (IHM for short). He stores these products for display and sale in his store in San Pablo City, under a contract called "Dealer Sales and Service Agreement". For resolution of the issue of whether taxpayer was an independent merchant, as he claimed, and therefore not taxable as a commercial broker or whether he was merely an agent to sell the products, and therefore taxable as commercial broker, the "Dealer Sales and Service Agreement" had to be examined.

Taxpayer cited the following facts to support his theory that he is an independent merchant: (1) he may buy from IHM on cash or credit, (2) he is granted trade discounts under a schedule of discounts and terms, (3) credit terms and discounts are governed by a "retail financing agreement", (4) he may purchase parts on open credit account or on a 50-day term, and (5) he sold parts to his customers on cash basis. He also claims that the mechanics of the transaction made him an independent merchant, not the agent of IHM. Thus, purchases of heavy equipment start by his filing with IHM a "Dealer Order for Goods"; if on credit, he executes a chattel mortgage in favor of IHM; if in turn he sells to his customers on credit, the latter are required to execute a chattel mortgage in his favor. He then executes an indenture of assignment in favor of IHM. His purchases are covered by sales invoices of IHM and when he resells, he issues his own sales invoices. He accepts purchases from IHM's "ex bodega" in Manila and ships them to his store in San Pablo where he services them before delivery to his own customers. His credit purchases of heavy equipment are

[19] G.R. No. 25926, February 27, 1970, 31 SCRA 779 (1970).

insured by IHM and proceeds, in case of loss, are divided between him and IHM *pro rata*. Premiums are for his account, though. His cash purchases are insured by him. He includes the unsold stock as part of the list of inventory submitted to the BIR annually.

On the other hand, the Supreme Court held taxpayer to be a mere agent of IHM and therefore taxable as commercial broker. In reversing the lower court, the Supreme Court relied heavily on the fine print found in the "Dealer's Order for Goods" and other documents in the chain. These are all in the nature of adhesion contracts, being on printed forms prepared and supplied by IHM and binding the dealer to IHM and the dealer to his customers. In effect, the Supreme Court found that the small print retained title to the goods in the IHM until the full purchase shall have been paid. Under its terms, taxpayer was required to execute chattel mortgage to secure payment and he has no right to sell or dispose of any goods before full payment except in the ordinary course of retail trade and upon the express condition that taxpayer shall secure from his customer full settlement and the proceeds of such resale shall be considered as property of IHM, held in trust for it. Said the Supreme Court:

> "In plain language, the effect (of the above-described conditions) is that the title to goods sold by the dealer to his 'customer' passes directly to the latter from IHM, and that the price of such goods, even if previously shipped to the dealer upon his order, belongs to IHM, not to the dealer, who merely collects and holds the proceeds in trust. Hence, in the 'Dealer Order for Goods', the dealer does not make purchase orders; he merely orders for shipment to himself the goods specified therein. And while in the Dealer Sales and Service Agreement, the contractual provisions of orders of goods refer to or use such terms like 'purchase', 'obligation to sell' and 'obligation to buy', the said Dealer Sales and Service Agreement expressly binds the dealer, when ordering goods, to place his orders' upon forms furnished by the Company' x x x and the form furnished is the 'Dealer Order for Goods', with the clause previously quoted".

The Supreme Court observed that on credit purchase by taxpayer from IHM where he assigns the chattel mortgage executed in his favor by his customer via an "Indenture of Assignment", he does not acquire ownership of the goods when delivered to him; nor does the customer acquire ownership because the "Dealer Order for Goods" expressly provides that title remains with the IHM until full payment of the price. The chattel mortgage executed by the customer in favor of taxpayer does not make the customer the owner, for taxpayer did not own the goods "sold" in the first place. The Court also ignored the legal effect of the sales invoice issued by the taxpayer to the customer for it is not a means of acquiring ownership nor is it a proof of ownership.

The Court further bolstered its conclusion by examining the "Retail Financing Agreement" entered into between the IHM and the taxpayer.

When taxpayer buys goods on credit for resale, he does not buy with his own funds because the agreement expressly prohibits taxpayer to advance the down payment or any installment to his customer. Moreover, the retail contract executed by the customer as well as the latter's credit is subject to approval by IHM. Effect: it is the customer who buys on credit because the purchase money comes from him, not from the taxpayer and the credit that is financed is that of the customer, not that of the taxpayer-dealer.

Even the supposed "cash" sale to taxpayer was brushed aside by the Court which observed that it was not really a cash sale for neither cash nor money was paid. By the terms of the "Delivery Receipt" issued by IHM (not sales invoice as pretended by taxpayer) to taxpayer, payment is due and payable first day of the month following shipment. Hence, under the fine print found in the Purchase Order for Goods, title remained with IHM even on those goods shipped on the "cash" basis.

Concluded the Court:

> "Since the company retained ownership of the goods, even as it delivered possession unto the dealer for resale to customers, the price and terms of which were subject to the company's control, the relationship between the company and the dealer is one of agency..."

Dissecting the provisions of the "Dealer Sales and Service Agreement", the Supreme Court found that the control by IHM of the resale made or agreed to be made by the taxpayer is so pervasive to exclude the idea that the latter is an independent merchant. Taxpayer is therefore taxable as a commercial broker.

Common carrier's tax-conversion rate of receipts in foreign exchange

On July 16, 1959, Republic Act No. 2609 took effect fixing the legal free market conversion rate of foreign exchange, apart from the parity rate of ₱2.00:$1.00. Before this date, all foreign exchange had to be surrendered to the Central Bank at ₱2.00:$1.00 as the only legal rate of exchange. Thus, in the case of *United States Lines v. Commissioner* [20] the Supreme Court held that receipts paid abroad to carriers for transportation service rendered in the Philippines and not remitted here were convertible at the legal parity rate of ₱2.00:$1.00, not at the prevailing black market or curb rate.

On the authority of this decision, another foreign carrier doing business in the Philippines paid its 1962 common carrier's tax by converting its dollar earnings at the rate of ₱2.00:$1.00. In that period, the free market conversion rate recognized as legal under Republic Act No. 2609 ranged from ₱3.47 to ₱3.65 to the U.S. dollar. It was at these ratios that the Commissioner of Internal Revenue computed the common carrier's tax due from

[20] G.R. No. 16850, May 30, 1962, 5 SCRA 175 (1962).

the foreign carrier. The taxpayer insisted that the earnings were not physically remitted to the Philippines and could not be deemed revenue derived from foreign exchange. *Held,* these are revenues from transactions occurring entirely in the Philippines and taxable in the Philippines. Though collected abroad and not remitted here, they form part of foreign exchange operations subject to the common carrier's tax at the then prevailing free market rates of ₱3.47 to ₱3.65 to the U.S. dollar. These transactions occurred after July 16, 1959 and could not be controlled by the *U.S. Lines* case that referred only to transactions occurring before said date.[21]

Also notable in this decision is the recognition by the highest Court of accounting practices among merchants, who seldom bring or send money physically from one country to another. Their processes of bookkeeping and accounting, according to the court, are equivalent to delivery, receipt or remittance. Said the Court:

> "The theory of the taxpayer to the effect that, not having been physically remitted to the Philippines, the fees in question do not partake of the nature of revenues derived from foreign exchange transactions, is manifestly devoid of merit. The transactions from which said revenues were derived involved the loading of cargo in the Philippines, the transportation of said cargo to its ports of destination, the delivery of the cargo to the respective consignees, and the payment of the corresponding fees to the taxpayer's head office at Amsterdam. As regards the taxpayer, the transactions were consummated upon delivery to the consignees; upon the other hand, the obligations of the latter or the shipper were discharged upon payment of the freight. Insofar as the parties to the transaction were concerned, the *same were fully completed upon payment of the fees at Amsterdam* . . . .
> ". . . . . . In short, the remittance or non-remittance of said fees could not affect the nature of said transactions, as involving foreign exchange, *not being a part thereof in any manner whatsoever.*
>
> "Then again, we take it that — in line with the ordinary course of business, adherence to which is presumed . . . . upon receipt of said freight, the same must have been credited in the records of the taxpayer's main office in Amsterdam, in favor of its branch office in the Philippines, and that upon notice of such payment to the head office in Amsterdam, the branch office in the Philippines must have, in turn, *debited* said fees against its main office. Such processes of bookkeeping and accounting are, for legal purposes, tantamount to delivery, receipt of remittance. . . . ." (*Royal Interocean Lines* case, *idem,* pp. 14015. Underscoring supplied.)

The Supreme Court also strengthened its conclusion by reducing to absurdity the contention that the ₱2.00:$1.00 ratio should apply if earnings are not remitted to the Philippines and the free market rate if so remitted.

[21] Commissioner of Internal Revenue v. Royal Interocean Lines, G.R. No. 26806, July 30, 1970, 34 SCRA 9 (1970).

According to the Court, the effect would be to discriminate against those who help maintain or increase our international reserves and favor those who not only fail to bring their dollar earnings as part of our reserves, and worse, induce other merchants not to remit their earnings here. Such a result certainly had not been intended by the Congress in enacting Republic Act No. 2609.

The law on the matter, therefore, is: whether or not dollar earnings are remitted to the Philippines, they should be converted, for taxation purposes, at the prevailing legal free market rates. For the period 1970, the Department of Finance fixed this ratio at ₱6.25:$1.00. Transactions before Republic Act No. 2609 are of course governed by the *U.S. Lines* case.[22]

Prescription—collection of percentage tax

The Tax Code defines the reglamentary period for the assessment and collection of taxes. Application of the rules therefore would seem to be mechanical, not involving profound issues. This is not so, however, because difficulties arise in determining when the counting of the period should start, when interrupted and when resumed. The case of *Republic v. Aquias*[23] further enriches jurisprudence on this matter.

There, assessment for payment of deficiency percentage tax was issued on June 12, 1954. Taxpayer asked for reinvestigation on August 9 which was granted by the BIR on September 2, 1954, and set for October 15, 1956. On the last date, taxpayer and counsel did not appear. Over four years later or on November 12, 1960, the BIR issued warrant of distraint and levy. A subsequent request for reinvestigation was denied by the BIR which reiterated its demand for payment of the deficiency assessment. Taxpayer did not appeal to the Tax Court. On May 2, 1962, the government sued in the Court of First Instance to collect the tax.

Has the right of the government to collect prescribed when it filed the suit in the Court of First Instance? The Supreme Court held, no, and it computed the five-year prescriptive period as follows:

June 12, 1954 — May 2, 1962 = 7 years, 10 months, 20 days

Less: interrupted period when BIR could not collect — September 2, 1954 (granting of reinvestigation) to November 21, 1960 (distraint and levy) = 6 years 2 months and 19 days.

Therefore, out of the five-year prescriptive period to collect, only 1 year, 8 months and 1 day were used. The Commissioner still had more than 3 years to proceed against the taxpayer.

[22] *Supra*, note 20.
[23] G.R. No. 21874, June 30, 1970, 33 SCRA 607 (1970).

This case conforms with previous decisions where the taxpayers were prevented from invoking the defense of prescription because by their repeated requests or positive acts the government, for good reasons, was persuaded to postpone collection.[24] In all these cases, the hands of the government would figuratively be said to have been tied, as was stated by the court in the instant case. Where, however, the request for reinvestigation made by the taxpayer is not acted upon by the Commissioner of Internal Revenue who brings suit to collect after five years have elapsed, then prescription sets in and the government is barred from collecting the tax.[25] Similarly, where the Commissioner of Internal Revenue grants the request for reinvestigation after five years from date of deficiency assessment, the taxpayer could claim the defense of prescription.

III. UTILITIES — FRANCHISE TAX

This heading is used solely for convenience of classification aid not because the issues decided by the cases discussed necessarily involved the franchise tax. Included here are cases clarifying the meaning of "gross receipts" of utilities and the interplay between the Local Autonomy Act and the franchise of the public utility.

Section 259, Tax Code — what rate to apply

As in the past, there are still questions involving the applicable rate — is it the lower rate fixed in the franchise or the higher rate imposed by Section 259 of the Tax Code? The Supreme Court continues to hew to these rules: (1) the higher rate imposed by Section 259, Tax Code, applied where the state reserved the right to repeal, amend, alter, or modify the franchise granted, otherwise the lower rate fixed in the franchise is protected from being increased by the non-impairment clause of the Constitution.

This is again illustrated in the 1970 case of *Escudero Electric Service Co. v. Tabios.*[26] In that case, the taxpayer enjoyed an electric franchise to operate in the municipalities of Candelaria, Quezon and Calauan, Laguna, both of which municipalities granted it the privilege to operate under ordinances passed pursuant to Act No. 667. The rates payable under the ordinances were 1% of gross receipts for the first 20 years and 2% thereafter. Subsequently, the Congress amended Section 259, Tax Code, increasing the franchise tax to 5% of gross receipts or earnings. Hence, the

[24] Collector of Internal Revenue v. Suyoc Consolidated Mining Co., 104 Phil. 819 (1958).
[25] Republic v. Acebedo, G.R. No. 20477, March 29, 1968, 22 SCRA 1356 (1968).
[26] G.R. No. 23014, June 30, 1970, 33 SCRA 547 (1970).

Commissioner of Internal Revenue assessed taxpayer for deficiency franchise tax, plus 25% surcharge for late payment.

In computing the tax due under its franchise, the taxpayer excluded uncollected amounts, with which method the Commissioner disagreed. This is another item included in the deficiency assessment.

The issues resolved were: (1) which rate is applicable, (2) meaning of the term "gross receipts" as basis of the franchise tax and (3) imposition of the 25% surcharge for late payment. Held, as to the first issue, the higher rate of 5% imposed by Section 259, Tax Code, applied. This is so because the Court found that the state has reserved its power to alter or modify the franchise for Act No. 667 expressly provided that franchises granted thereunder shall be "subject to the power of Congress to alter, modify or repeal the same." The Court cited four cases where it held similarly.[27] On the second issue, the Court held that uncollected amounts are part of taxable gross receipts, relying on the case of *Philippine Long Distance Telephone Co. v. Collector of Internal Revenue*,[28] thus:

> "x x x 'Receipts' means amount actually received, for otherwise they would not be receipts. If the words of the franchise were to be construed in their literal sense, independently of the organic act or the Constitution, the theory of the plaintiff-appellant may be plausible; but it should be noted that the Philippine Legislature granted the franchise through Act Nos. 1368 and 3436 under the authority vested in it by Section 74 of the Philippine Bill of 1902, the first organic act, and by Section 28 of the Jones Law, x x x
>
> x x x Consequently, the uncollected 'gross receipts' which should be construed as meaning the same thing as 'gross earnings' should be subject to the franchise tax."

The Supreme Court further observed that Section 259, Tax Code, as amended, uses the term "gross earnings or receipts" so that "gross receipts" has the same meaning as "gross earnings".

On the third issue, the Supreme Court followed the *Imus Electric* and *Guagua Electric* cases, and excused the taxpayer from payment of the 25% surcharge because it acted in good faith in paying the lower rate of the franchise tax. Such good faith is strengthened by the fact that at one time or another, even the Commissioner of Internal Revenue had the same view as the taxpayer.

It is to be observed that in the imposition of the 25% surcharge for late payment of the franchise tax, the Supreme Court has been rather lenient

[27] Balanga Power Plant v. Commissioner. G.R. No. 20499, June 30, 1965, 14 SCRA 604 (1965); Imus Electric Co. v. Court of Tax Appeals, G.R. No. 22421, March 18, 1967, 19 SCRA 612 (1967); Guagua Electric Light Co. v. Collector, G.R. No. 23611, April 24, 1967, 19 SCRA 790 (1967); and Commissioner v. Ilagan Electric & Ice Plant Inc., G.R. No. 23081, September 30, 1969, 29 SCRA 634 (1969).

[28] 90 Phil. 676 (1952).

on the taxpayer's proof of good faith. This surcharge is imposed under Section 59, Tax Code. Yet, in the imposition of the 25% surcharge for late payment of the sales and other percentage taxes, it has consistently rejected good faith and insisted that the surcharge is not discretionary with the Court but mandatory. In the case of *Commissioner of Internal Revenue v. Royal Interocean Lines,* the taxpayer, upon advise of counsel, converted its dollar revenue from freight service rendered in the Philippines, on the basis of a Supreme Court decision instead of the prevailing free market rate, consequently paying a lesser common carrier's tax. The Court disregarded that decision by distinguishing the facts from those of the old case from those of the *Royal Interocean* case, and found the method used to be incorrect. The taxpayer thereupon urged that the 25% surcharge for delinquency should not be imposed, citing *Connell Bros.. v. Collector* [29] and *Imus Electric Co. v. Court of Tax Appeals.* The Supreme Court reiterated its decisions in earlier cases [30] sustaining the imposition of the 25% surcharge for late payment. In the process, it distinguished the *Connell Bros.* and *Imus* cases and concluded that in both, "there had been no failure to pay the tax assessed therein so that there was really no legal justification for the imposition of the surcharges.[31] At any rate, added the Court, neither the *Connell Bros.* nor the *Imus* cases or both suffice to outweigh the six cases earlier decided holding that the 25% delinquency surcharge is mandatory.

Taxing powers under Republic Act No. 2264

In another case, the Supreme Court was faced with the conflict between the enlarged powers given to local governments to impose taxes on privileges, acts and businesses in their respective jurisdictions on the one hand and the vested right of a franchise grantee on the other. In the case of *Cotabato Light & Power Co. v. City of Cotabato,*[32] taxpayer is a grantee of a legislative franchise to operate an electric light, heat or power for sale within the municipality of Cotabato. Under its franchise, it shall pay for this privilege a tax of 2% of gross earnings and the same shall be in lieu of any and all taxes of any kind, nature or description levied or collected by any authority, insular, provincial or municipal, on its poles, wires, etc. In June, 1959, Congress passed Republic Act No. 2264, otherwise known as the Local Autonomy Act, enlarging the taxing powers of local governments. Pursuant to Republic Act No. 2264, Cotabato City enacted an ordinance imposing a graduated "license fee" on the sale of electric light, heat or

[29] G.R. No. 15470. December 26, 1963, 9 SCRA 735 (1963).

[30] Lim Co Chui v. Posadas, 47 Phil. 460 (1925); Koppel (Phil.) Inc. v. Collector, 87 Phil. 348, 350-351 (1950); Insular Lumber Co. v. Collector, 98 Phil. 1012-1013 (1956); Republic v. Luzon Industrial Corp., 102 Phil. 189, 193 (1957); Pirovano v. Commissioner, G.R. No. 19865, July 31, 1965, 14 SCRA 832 (1965) and Republic v. Lim Tian Teng, G.R. No. 21731, March 31, 1966, 16 SCRA 584 (1966).

[31] Commissioner of Internal Revenue v. Royal Interocean Lines, *supra,* note 21.

[32] G.R. No. 24942, March 30, 1970, 32 SCRA 231 (1970).

power. The taxpayer contested this Ordinance in the Court of First Instance in a complaint for declaratory relief. The lower court declared the ordinance *ultra vires* and therefore null and void on the ground that Republic Act No. 2264, section 2(j) prohibits local governments from imposing a tax on persons already paying the franchise tax. The lower court of course held that the ordinance imposed a tax, not a license fee, because the purpose was to raise revenue. On appeal, the City anchored its argument on Section 2(d) and (j) of the Local Autonomy Act, reproduced as follows:

> "Sec. 2. *Taxation* — x x x *Provided,* however, That no city, municipality or municipal district may levy or impose any of the following:
>
> (d) Taxes on persons operating waterworks, irrigation and other public utilities *except* electric light, heat and power;
>
> x x x x x x
>
> (j) Taxes of any kind on banks, insurance companies and persons paying franchise tax; and"

The City of Cotabato pointed out its broad powers under Section 2, Republic Act No. 2264 to impose municipal license taxes or fees and to impose just and uniform taxes. Under Section 2(d), according to the City, persons engaged in the business of electric light, heat and power are removed from the prohibition to be taxed provided therein. On the contrary, the taxpayer pointed to Section 2(j) as protecting it from the taxing ordinance, because it is a person paying the franchise tax. But the City insisted that Section 2(j) does not apply to electric light, heat and power, which should be governed by Section 2(d), otherwise, it argued, the phrase "except electric light, heat and power" in paragraph (d) would be absolutely inoperative.

The Supreme Court rejected the argument of the City by observing that not all those engaged in the business of electric light, heat and power are inevitably subject to the franchise tax. Franchises may be granted without an accompanying requirement for the payment of a franchise tax. Thus, Section 2(j) is not repugnant to Section 2(d). The Court held that the ordinance does not apply to the taxpayer because Republic Act No. 2264 under which it was passed did not repeal or amend the franchise granted by the Legislature to the taxpayer, invoking once again the canon that general laws do not amend special laws. In the instant case, it is accepted that the franchise is a special law and Republic Act No. 2264 a general law. On this basis, there was no need to declare the ordinance *ultra-vires,* therefore null and void nor was it necessary to pass upon the question of whether the ordinance is a police regulation or a pure tax. With these modifications, the lower court's decision was affirmed.

The subject of local taxation, including Republic Act No. 2264, is discussed fully below.

Public Service Commission — supervision fee

Buried somewhere in existing statutes are provisions untapped as rich sources of revenue because, among others, of the uncertainty of their meaning. One of these is Section 40(e) of the Public Service Act, amended by Republic Act No. 3792, which directs the Public Service Commission to collect supervision fee. On the belief that what is required to be paid is a fee for services rendered by the Commission, especially so because said Section uses the term "reimbursement", many businesses covered by the Public Service Act have not been active in making this payment. For convenience, we reproduce this section as originally drafted in Commonwealth Act No. 466, the Public Service Act and as amended by Republic Act No. 3792 on June 22, 1963:

Commonwealth Act 1466 —

"Sec. 40. The Commission is authorized and ordered to charge and collect from any public service the following fees:

x x x x x x

"(e) For reimbursement of the expenses incurred by the Commission in the supervision of other public services: ₱0.10 for each ₱100 or fraction thereof, of the capital stock subscribed or paid, or if no shares have been issued, of the capital invested." (As amended by Commonwealth Act 454.)

Republic Act No. 3792 —

"Sec. 40. The Commissioner is authorized and ordered to charge and collect from any public service or applicant, as the case may be, the following fees as reimbursement of its expenses in the authorization, supervision and/or regulation of public services:

"(e) For annual reimbursement of the expenses incurred by the Commission in the supervision of other public services and/or in the regulation or fixing of their rates, twenty centavos for each one hundred pesos or fraction thereof, of the capital stock subscribed or paid, or if no shares have been issued, of the capital invested, or of the property or equipment, whichever is higher."

In September, 1964, the Public Service Commission issued assessments for this supervision and regulation fee against several public utilities engaged in the telephone, electric light, heat and power, radio broadcasting and shipping businesses. While they did not deny liability under the section, they contested the method of computation used by the Commission. The Commission used the value of their respective properties and equipment, instead of the subscribed and paid up capital of the stock corporations, which are lower than the value used by the Commission. Their motions for reconsideration being rejected by the Commission, the utilities appealed to the Supreme Court.[33]

[33] PLDTC v. Public Service Commission, G.R. No. 26762, MERALCO v. Public Service Commission, G.R. No. 26765, Philippine Steam Navigation Co. v. Public Service Commission, G.R. No. 26779, General Shipping Co., Inc. v. Public Service Commission, G.R. No. 26799, all dated August 31, 1970, 34 SCRA 609 (1970).

The appellants contend that the phrase in Section 40(e) as amended in June, 1963, to wit, "or of the property or equipment, whichever is higher", means that this alternative base should be used only in the case of non-stock utilities and not in the case of stock corporations. This is the intendment of the Congress, they argued, because it is difficult to ascertain the capital invested in non-stock utilities.

The Commission, sustained by the Supreme Court, rejected this argument. It observed that the cost of property and equipment is usually higher than the capital stock subscribed and paid up in the case of stock corporations or the capital invested in non-stock corporations. It would therefore be discriminatory, unfair and unjust to the non-stock corporations if the alternative base added by Republic Act No. 3792 were to exclude stock corporations. To strengthen this conclusion, the Commission also noted the use of the comma after the phrase "capital invested". This punctuation would not be there, said the Commission, if the intent was to exclude stock corporations.

The appellants also contended that the fee collected is for supervision and regulation; as a police exaction it is grossly disproportionate to the amount spent in supervising the public service. The Supreme Court held that the "supervisory fee" is intended by the statute to raise revenue for the general expenses of the Commission. This is so provided in the last paragraph of Section 40 which expressly prescribes that

> "any unexpended *balance of the fees* collected by the Commission under this section shall be constituted receipts *automatically appropriated* each year and x x x *shall be disbursed* x x x *for additional needed personal services, maintenance and operating expenses,* acquisition of urgently needed vehicles, furniture and equipment".

It is now clear, therefore, that the supervisory fee imposed under Section 40(e) is a tax collectible from all utilities referred to therein; regardless of the performance by the Public Service Commission of any act of regulation or supervision or of the disproportion between the fee and the expenses incurred by the Public Service Commission. While the appellants also contended that regarded as taxes, the supervisory fees are confiscatory and violative of substantive due process, the Supreme Court answered that they did not submit any evidentiary data to substantiate their point. Said the Court: "That the amounts to be collected are large do not, *per se* alone, suffice to establish their confiscatory character."

This rule that the supervisory fee in Section 40(e) is a tax completely denies utilities of a last refuge against being assessed by the Commission. As a fee for police regulation or supervision, they could well argue that they are not liable to reimburse the Commission in those cases where no acts of regulation or supervision are performed. It seems that those engaged

in the broadcasting industry, radio and TV could have used this argument because the only participation of the Public Service Commission in their supervision and regulation is in rate-fixing, and this is not done annually. This decision forecloses such a defense.

A palliative was prescribed by the Supreme Court when it held that the alternative measure of the supervisory or regulatory fee should be based on the actual value of the properties and equipment, not on their original cost. This means the depreciated value. Considering the very high cost of machinery and equipment of utilities, reduction of the tax base by the annual depreciation could mean substantial reduction of the fees collectible by the Commission.

IV. BACKPAY CERTIFICATES

In 1948, obedient to the prevailing sentiment, the Congress enacted Republic Act No. 304 recognizing the right of employees of the Philippine government to receive their salaries and wages in the form of backpay certificates during the period that the country was occupied by the Japanese. These were written acknowledgments that the government owed the holder the stated sum to be paid within ten years. The Act further allowed the use of these certificates, for the whole amount or merely a part thereof, to pay the holder's taxes, among other things. It is in this context that these backpay certificates contributed somewhat to the development of tax jurisprudence in this country. Of particular pertinence in this regard is the question of (1) what is a tax? (2) who is entitled to avail of this privilege to pay taxes with these certificates?

Earlier, the Supreme Court ruled that motor vehicle registration fee is a tax, and may therefore be paid with backpay certificates of indebtedness issued to the original holder.[34] In 1970, however, the Supreme Court overruled this decision and held that fees for the registration of motor vehicles are not taxes but fees for the registration of vehicles, and cannot therefore be paid with backpay certificates.[35]

In the 1970 case, the taxpayer is a transportation company owing ₱78,636.17 as the registration fee, second installment, for 238 vehicles. It is an assignee of certificates of indebtedness totalling this amount in the names of the original holders of the backpay certificates. Both the Treasurer of the Philippines and the General Auditing Office signified their conformity to the payment of the fees with the certificates of indebtedness already accepted and receipted for by the Motor Vehicles Office in Baguio.

The government filed a complaint in the Court of First Instance for the invalidation of the payment on the ground that only original holders of

[34] Calalang v. Lorenzo & Villar, 97 Phil. 212 (1955).
[35] Republic v. Philippine Rabbit Bus Lines, Inc., G.R. No. 26862, March 30, 1970.

the backpay certificates could apply the same to the payment of motor vehicle registration fees. This argument did not find favor with the lower court which held that it is contrary to the recital in the certificate that the Republic of the Philippines acknowledge to the holder or assigns the debt appearing therein. It upheld the payment as valid and effective.

In the appeal to the Supreme Court, the principal error discussed was the failure of the lower court to hold that under the law, only the original holders of the backpay certificate are allowed to use the same for payment of their taxes, that assignees are prohibited from exercising this privilege. While the Supreme Court found no need to pass upon this point in this case, it did so in another case discussed below, *Republic v. Heras*.[36]

The Supreme Court rather decided the *Philippine Rabbit Bus Lines* case on the issue of the nature of the registration fee as a fee, not a tax. After referring to the traditional distinctions between a tax and a fee and to definitions of a tax, the Court concluded that the motor vehicles registration fee is what the statute calls it, a fee, and not a tax. The Court arrived at this conclusion on two premises: (1) the statute, in the heading and in the body, repeatedly refers to "registration fees", and (2) Republic Act No. 5448, which imposes an additional charge on privately-owned passenger automobiles, motorcycles and scooters and expressly calls the same a tax, as distinguished from registration fee. Concluded the Court:

> "There cannot be any clearer expression of legislative will, even on the assumption that the earlier legislation could be stretching the point be susceptible of the interpretation that a tax rather than a fee was levied. What is thus most apparent is that where the legislative body relies on its authority to tax it expressly so stated, and where it is enacting a regulatory measure, it is equally explicit." (*Idem.* p. 216.)

It is to be observed that this later case never hinted much less mentioned the earlier and contrary case of *Calalang v. Lorenzo*, which should be deemed overruled. The intention to overrule becomes more apparent when it is considered that the Court could have reversed the lower court in the *Philippine Rabbit* case by merely adopting the theory of the government that assignees are prohibited from paying their taxes with backpay certificates originally issued to another person. In fact, this was what it held in the *Heras* case.

The *Philippine Rabbit* case therefore is authority for the rule (1) that the basic motor vehicle registration fee is not a tax, overruling in this respect the case of *Calalang v. Lorenzo*, and (2) the additional charge imposed on privately-owned passenger vehicles by Republic Act No. 5448, is, however, a tax.

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[36] G.R. No. 26742, April 30, 1970, 32 SCRA 507 (1970).

In the *Heras* case, taxpayer paid his 1958 income tax with backpay certificates of indebtedness assigned to him by the original applicants. The payment was accepted by the treasurer of the municipality but rejected by the Commissioner of Internal Revenue. When the taxpayer continued to refuse payment of the amount paid with the certificates of indebtedness, the government sued to collect the tax plus interest for late payment plus surcharge of 5%.

The issues were: (1) whether or not holders who are not the original applicants may pay their taxes with backpay certificates of indebtedness, and (2) whether or not taxpayer is liable for payment of interest for late payment plus 5% surcharge.

Held, assignees are prohibited from paying their taxes with backpay certificates of indebtedness. Only the original applicants are given this privilege by the statute. In enumerating the obligations that may be properly settled with backpay certificates, the Court observed that Section 2, Republic Act No. 304, the Backpay Law, uses the term "his taxes", government hospital bills of the "applicant", lands purchased or leased "by him" and any amount received by "the applicant". From these, said the court, is "unmistakable the intent of the lawmaking body, which is to limit the use of these certificates in certain specified cases to the applicants or original holders thereof".

The Court also answered the contention that the view of the Commissioner of Internal Revenue would limit the negotiability of the certificate, contrary to what is prescribed in the later proviso of Section 2 of the Act. This is not so, said the Court, because the acceptance of certificate of indebtedness for the settlement of the applicant's obligations refers to certificates of limited negotiability; on the other hand, the certificates referred to in the later proviso are not entitled to the privilege of applying them for settlement of the obligations of the indorsees.

On the issue of payment of interest and surcharge, the Court held in the affimative, and stated:

> "Under Sec. 51-e(2) and (3) of the Internal Revenue Code, where deficiency tax is not paid in full, there shall be collected upon the unpaid amount, as part of the tax, interest of 1% a month, but not to exceed the amount corresponding to 3 years, plus 5% surcharge, such surcharge and interests to be computed from notice of the assessment or demand therefor by the Commissioner. For once informed of the basis of the demand . . . of the existence of the BIR Circular disallowing acceptance of backpay certificates for settlement of the tax obligations of assignees or subsequent holders thereof — the refusal of the taxpayer to pay the demanded tax cannot be considered as made in good faith that would relieve him of liability for payment of surcharges and interest. It may even be mentioned that, in the present case, appellee's act of tendering payment,

> with backpay certificates, of the deficiency tax is an acknowledgment that the said tax is really due and demandable. x x x the interests collectible here is not punitive in nature . . . . but compensatory; it is compensation to the state for the delay in the payment of tax. It is the charge for the use by the taxpayer of funds that rightfully should have been in the government cofiers and utilized for the ends thereof."

Estoppel

In both the cases discussed above, the taxpayers asserted that the acceptance by the treasurer of the payment of the taxes involved in backpay certificates of indebtedness and issuing official receipts therefore placed the government in estoppel. In the *Philippine Rabbit* case, the Court brushed this aside and stated:

> ". . . That is not the law. Estoppel does not lie. Such a principle dates back to Aguinaldo de Romero v. Director of Lands (39 Phil. 814), a 1919 decision. Insofar as the taxing power is concerned, Pineda v. CFI, a 1929 decision, speaks categorically: 'The Government is never estopped by mistake or error on the part of its agents. It follows that, in so far as this record shows, the petitioners have not made it appear that the additional tax claimed by the Collector is not in fact due and collectible. The assessment of the tax by the Collector creates, it must be remembered, a charge that is at least *prima facie* valid. (52 Phil. 803, 807.) That principle has since been subsequently followed. (Numerous citations made.) While the question here is one of the collection of a regulatory fee under the police power, reliance on the above course of decisions is not inappropriate."

The Court did not even bother discussing the point in the other case.

V. MUNICIPAL TAXATION

Local Autonomy Act

Compared with the past, the recognition that local governments, to be able to function effectively, should have broad powers to tax, seems to be more accepted now. It is in this light that the Congress passed the Local Autonomy Act, Republic Act No. 2264. The Courts have tended to interpret and construe this Act in the spirit that it was passed and rarely have they invalidated ordinances of cities and municipalities passed pursuant thereto. It is only when there is a clear transgression of the inhibitions enumerated in the law that the courts declare the ordinance null and void. The decision-year 1970 followed this trend.

In *Northern Philippines Tobacco Corporation v. Municipality of Agoo, La Union*,[37] the municipality increased 300 per cent the license tax on tobacco redrying plants measured by the number of kilos redried per annum, as follows:

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[37] G.R. No. 26447, January 30, 1970, 31 SCRA 304 (1970).

> "Section 1. That all redrying plants established, maintained and/or operated within the Municipality of Agoo, La Union, shall pay Municipal License Tax, as indicated herein, payable quarterly, graduated as follows:
>
> "1. Redried plants, having a total or maximum redried Virginia leaf tobacco of not more than 400,000 kilos . . . . . ₱4,000 per annum.
>
> "2. From 400,001 to 800,000 kilos . . . . . ₱8,000 per annum and so on x x x x"

The petitioner assailed the ordinance as *ultra vires*, unjust, excessive, oppressive, confiscatory, and discriminatory because it was strictly enforced against it while leniently enforced against its competitor. Its theory was that the subject of the tax or what was being taxed was the service of redrying tobacco. If so, according to petitioner, the proper impost was not a license tax but a license fee, in which event, the rate collected becomes excessive and unjust. In other words, petitioner's theory was that the ordinance was passed in the exercise of the municipality's police power to regulate businesses or occupations and the rate should be enough only to cover expenses of inspection, supervision and regulation.

Held, the ordinance is valid. The Supreme Court observed that petitioner's argument is based on a wrong premise because by express declaration, the ordinance was passed to raise revenue, not merely to regulate. The court further stated that there can be no mistake about the revenue character of the ordinance for it provided no police inspection, regulation or supervision; set no standards or rules of action for the conduct of the business of tobacco redrying. Instead, it clearly imposed a license tax on all redrying plants in the municipality. If the ordinance imposed a tax on an occupation, according to the Court, the same was perfectly within the authority of the council, for Republic Act No. 2264 provides in Section 2 that "all chartered cities, municipalities and municipal districts shall have authority to impose municipal license taxes or fees, upon *persons engaged in any occupation or business*" and redrying of tobacco is as much an occupation or business as manufacturing. Having concluded that the tax is on an occupation or business, the Court ruled out contentions that it would fall among the prescribed taxes and charges that a municipality or city cannot impose. The Court said that the tax cannot be percentage or sales or income tax for it is not imposed on the sale of tobacco or the receipt of income but on the occupation or business of redrying tobacco. Reference to the volume of the business is only for the purpose of using the same as a measure or basis of the tax, and not to make it the subject of the tax. In this respect, this case illustrates the distinctions between subject and measure of a tax in analysing tax ordinances and statutes.

Also, the Court dismissed the charge that the tax is unjust, confiscatory, excessive and oppressive by observing that petitioner failed to present proof to that effect. It is important, as this case illustrates, to substantiate

this allegation with proof otherwise it will be brushed aside. As to the contention that the tax is discriminatory because it is leniently enforced against petitioner's competitor, the Court said that, if true, petitioner's recourse lies in another action, not in an attack against the legality of the ordinance.

Powers under the city charter

Basically, the power of taxation exercisable by cities is found in their respective charters. Complementary is of course the provision found in Section 2, Republic Act No. 2264, otherwise known as the Local Autonomy Act, greatly enlarging this particular power. But city charters and Republic Act No. 2264, being statutes, may be amended expressly or impliedly by provisions in other and later acts enacted by the Congress. In 1970, the courts had an opportunity to inquire into the extent of the tax powers of the City of Bacolod, Negros Occidental, under its charter in the light of the provisions of Republic Act No. 2264 and particular special laws, like the Motor Vehicle Registration Act.

In the case of *Luzon Surety Company, Inc. v. City of Bacolod,*[38] the city, exercising the taxing power enumerated in its charter, Commonwealth Act 326, passed an ordinance imposing a fixed annual fee of ₱300 on "fiadores (casas y companias)" and a ₱20 mayor's permit fee before any "business, trade, occupation or profession, or industry hereinbelow specified can be lawfully began, established, conducted, exercised or pursued, etc." The ₱20 was imposed under paragraph 82, Article 4 of the questioned ordinance, on any "other business, trade or occupation not mentioned in this ordinance, except those upon which the City is not empowered to license or to tax". The taxpayer in this case is admittedly engaged in the business as a surety company and was found to be so by the Court of First Instance which sustained the validity of the ordinance.

Picking up from the finding of the lower court, the taxpayer appealed to the Supreme Court, contending that Section 2, par. (j), Republic Act No. 2264, prohibits cities from imposing "taxes of any kind on banks, *insurance companies* and persons paying franchise tax", that surety companies are insurance companies, therefore as applied to it, the tax in question is null and void.

Defendants in admitting that taxpayer is a surety, nonetheless attempted to distinguish "sureties" from insurance companies in order to render inapplicable the prohibition relied upon by the taxpayer. *Held,* (1) sureties are insurance companies within the purview of the prohibition mentioned in Section 2(j), Republic Act No. 2264, thereby rendering the taxpayer not

[38] G.R. No. 23618, August 31, 1970, 34 SCRA 509 (1970).

liable for the payment of the ₱300 fixed annual fee; and (2) but the ₱20 mayor's permit fee is a lawful exercise of its police power under its charter.

In reaching its decision, the Supreme Court reiterated the observation made above as follows:

> "No doubt surfaces as to the power of chartered cities to tax under the Local Autonomy Act. This Court has consistently upheld the doctrine that the grant of the power to tax to chartered cities under section 2 of the Local Autonomy Act is sufficiently plenary to cover 'everything, excepting those which are mentioned' therein, subject only to the limitation that the tax so levied is for 'public purposes, just and uniform'" (citing numerous cases).

The court, found, however, that the tax imposed by the City on the taxpayer falls under one of the exceptions mentioned. (This case is authority also for the definitions of "insurance companies" and that the business of sureties is essentially that of an insurance company.)

In upholding the ₱20 mayor's permit fee, the Court recognized the same as an exercise of the city's police power and that the amount is a "nominal" regulatory permit fee necessary "for the proper supervision and enforcement of existing laws and ordinances governing the sanitation, security and welfare of the public and the health of the employees engaged in the business therein specified".

A second case [39] involving the same Charter of Bacolod City was decided in 1970 by the highest court (reflecting incidentally, the full exploitation by a local government of the power to tax granted it by the Congress). Section 17(n) of Commonwealth Act 326 as amended by Commonwealth Act 404, empowers the City to tax motor and other vehicles, notwithstanding the provisions to the contrary contained in section 13 of Act No. 3993, as amended . . ." Pursuant thereto, the City imposed an annual graduated license fee on TPU operators or transportation companies which the tax payer paid under protest, being a transportation company operating a public utility. On the other hand, in 1950 the Congress passed Republic Act No. 587 amending Section 70(b), Article 2, Chapter IV of Act 3992, as follows:

> "(b) No other taxes or fees than those prescribed in this Act shall imposed for the registration or operation or on the ownership of any motor vehicle, or for the exercise of the profession of chauffeur, by any municipal corporation, the provision of any charter to the contrary notwithstanding: x x x"

This amendment was incorporated as Section 59(b) of Republic Act No. 4136, otherwise known as the Land Transportation and Traffic Code, June 1964.

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[39] Netran, Inc. v. Bacolod City, G.R. No. 29961, August 31, 1970, 34 SCRA 450 (1970).

Did Republic Act No. 587 and Republic Act No. 4136 repeal Section 17 of the Charter of Bacolod empowering the council to tax motor vehicles? The court held, yes. Republic Act No. 587, amending section 70(b) of Act 3992 and Republic Act No. 4136, being later enactments, should be construed as repealing Section 17(n) of the charter of Bacolod City, rendering null and void the graduated license fee in question.

The Supreme Court merely followed its earlier decision construing Section 70(b), Act 3992, even before its amendment by Republic Act No. 587, as a limitation upon the broad taxing powers of the City of Manila [40] and Republic Act No. 587 as repealing Section 12(c) of the Quezon City Charter (Republic Act No. 537).[41] This last Act authorized Quezon City to tax, license or regulate the operation of transportation business inside its territory. The Supreme Court reasoned its holding in the Quezon City case as follows:

> "x x x Sec. 17 of R. A. 587 x x x being a later enactment, (it) must be deemed to have repealed pro tanto Section 12(c) of R.A. 537, the Revised Charter of Quezon City. The business of transportation comprises simply the operation of motor vehicles defined in the Revised Motor Vehicles Law (Section 3 of Art. 11) as including 'all vehicles using the public highways, if propelled by any power other than muscular power. To tax or impose a license fee on the transportation business of the appellee is therefore to tax or impose a license fee on the operation by the appellee of its vehicles, already exclusively covered by the Revised Motor Vehicles Law."

VI. CUSTOMS

Prohibited merchandise—U.S. checks, bills

The Revised Administrative Code in Section 1363 commands the forfeiture of "merchandise" of prohibited importation or exportation and merchandise wrongly or falsely declared. During the decade of the fifties, the government pursued a policy of strict foreign exchange control in order to shore up our dwindling revenues. Thus the Central Bank promulgated Circular No. 20 requiring prior licensing of all transactions in foreign exchange, and Circular No. 42 punished any person who, without such prior license, placed foreign exchange in any outgoing international carrier for exportation.

Applying these provisions, the Commissioner of Customs seized and declared as forfeited checks, money orders and bills, all in U.S. dollars hidden in cardboard boxes containing minifon recorders consigned to a priest

[40] Association of Customs Brokers, Inc. v. Municipal Board, G.R. No. 4376, May 22, 1953, 93 Phil. 107, 111 (1953).

[41] Heras v. The City Treasurer of Quezon City, 109 Phil. 930, 934 & 935 (1960).

in Rome.[42] Only the minifons were properly declared. In his appeal to the Tax Court, the owner raised three issues: (1) the U.S. checks and money orders as well as the dollar bills, were not "merchandise" within the Scope of Section 1363, Revised Administrative Code; (2) hence the Central Bank Circulars Nos. 20 and 42 were not violated; and (3) the repeal of these Central Bank Circulars during the pendency of the case in the Bureau of Customs rendered the forfeiture academic. The Tax Court held against the owner in each of these issues. In affirming the lower court, the Supreme Court held:

(1) The U.S. dollar bills, having ceased to be legal tender here, are merchandise under Section 1363, Revised Administrative Code, as previously decided in a case.[43] The Supreme Court applied the definition of the term "merchandise" found in Section 1419, Revised Administrative Code, as follows:

> " 'Merchandise', when used with reference to importations or exportations, includes goods, wares, and in general anything that may be made the subject of importation or exportation."

and rejected the theory that the above definition is general and vague and connotes something tangible, such as goods, wares, commodities, as distinguished from intangibles, like choses in action, credits, rights, services.

The Court went on to state that "checks" are bills of exchange and fundamentally are negotiable instruments. Negotiable instruments are "more like money than a contract right or chose in action and as such may be subject of conversion or replevin or sale, like any other goods or wares. In fact it reproduced with approval the observation of the lower court that "checks may be bought and sold like a commodity". As to money orders, the court noted that they are also considered bills of exchange of limited negotiability. Anyway, according to the Court, the portion of the definition of "merchandise" stating "in general anything that may be made the subject of importation or exportation" is sufficiently clear and comprehensive to include checks and money orders.

The rule therefore is that checks, money orders and bills of exchange in foreign denomination are "merchandise" under Section 1419 of the Revised Administrative Code; (2) checks and money orders are foreign exchange because though not legal tender or currency, represented and were substitute for the currency bearing on their face. This was the decision of the lower court affirmed without elaboration by the Supreme Court; and (3) Central Bank Circular Nos. 20 and 42, though repealed by Central Bank Circular No. 133, were still enforcible as to the penalty of forfeiture.

[42] Bastida v. Acting Commissioner of Customs, G.R. No. 24011, October 24, 1970, 35 SCRA 449 (1970).
[43] Commissioner of Customs v. Capistrano, 108 Phil. 694 (1969).

These repealed circulars imposed two penalties, one *in personam*, a criminal prosecution against the offender, and the second, *in rem*, forfeiture directed against the goods imposed by Section 1363(f) Revised Administrative Code, rather than against the offender. The latter is civil in nature and is not abated by the subsequent repeal of the circulars by Central Bank Circular No. 133. "In this sense, therefore", said the Supreme Court, "the repeal cannot be given retroactive effect and cannot infuse the attribute of legality into the petitioner's attempt to export the checks, money orders and other bills in question." Furthermore, said the Court, the petitioner has been shown by the records to have conclusively made a false declaration in his application for export license. He thus came within the express prohibition of Section 1363(m) subparagraphs (3) and (4) against wrongful or false declaration and requiring that the goods so declared be forfeited.

Seizure proceedings — due process — bond

It is almost axiomatic that due process must be observed before any person may be deprived of liberty or property. In the enforcement of the customs laws where "property" is proceeded against, Section 2303, Tariff and Customs Code ensures due process by requiring that written notice and opportunity to be heard be given to the owner of the goods proposed to be seized. Section 2601, of the same Code, provides further that seized property, if not a contraband, shall be subject to sale if so established in proper administrative or judicial proceedings held in conformity with the Tariff and Customs Code.

The Supreme Court passed on this matter during the year under review in the case of *Commissioner of Customs v. Alikpala.*[44] Two authorized importers made use of existing balances in their letters of credit and imported apples and other fresh fruits from Japan. Their request for "no-dollar import permits" were denied by the Central Bank so that the customs authorities seized the goods as having been imported in violation of existing Central Bank circulars in relation to Section 2530-F, Tariff and Customs Code. Warrants of detention were issued after duties and other taxes were collected.

The Collector of Customs issued notice of auction sale of the apples and other fruits seized. Before the scheduled auction sale, the importers requested in writing that they be allowed by the Collector to release the goods upon filing of sufficient bonds, without prejudice, of course, to their contesting the validity of the seizure. This was approved and surety bonds aggregating ₱513,865.46 were required. However, when the request for approval of the bonds was submitted, the Collector changed his stand and required instead cash bond. Hence the importers rushed to the Court of Tax Appeals for preliminary injunction to stop the scheduled auction sale

[44] G.R. No. 32542, November 26, 1970, 36 SCRA 208 (1970).

until the validity of the seizure is determined. That Court denied the petition two days later for want of jurisdiction. Before this denial, the importers sought the same remedy from the Court of First Instance where they succeeded in securing injunction against the sale of the seized apples and other fresh fruits. The government thereupon elevated the matter to the Supreme Court on a petition for certiorari and prohibition with preliminary injunction to declare null and void and set aside the orders of the Court of First Instance. The issue: did the Court of First Instance have jurisdiction to stop the scheduled auction of the seized merchandise? Yes, said the Court, stating—

> "That there must be some forum to which a party may apply for relief from an alleged violation of denial of his rights is a legal principle from which there can be no dissent, otherwise the rule of law would be defeated. The choice in this case is between the Court of Tax Appeals and the Court of First Instance. Recourse to the former was sought and denied. The Tax Court held that it could not issue the preliminary injunction prayed for except in the exercise of its appellate jurisdiction, and no appeal had been taken since no appealable decision had been rendered. The ruling appears to find support in the decision of this Court thus: (citing *Collector of Internal Revenue v. Yuseco*)."[45]

The Supreme Court then discussed why the Court of First Instance had jurisdiction. The Court of First Instance assumed jurisdiction on the ground that "the question presented for resolution was whether there was absence of due process" (citing *Nadeco v. Collector of Customs*).[46] The Court of First Instance observed:

> "Counsel for the respondents admitted that the petitioners have not been heard on the seizure proceedings and the imported cargo have already been advertised for sale and some would have been sold had not this Court issued a restraining order."

The Supreme Court recognized that the Court of First Instance had jurisdiction, stating as follows:

> "Due notice and hearing, besides being an inherent element of due process, is provided for in Section 2303 of the Tariff and Customs Code, which requires the Collector to give the owner or importer of the property written notice of the seizure and an opportunity to be heard in relation to the delinquency which was the occasion for such seizure, as well as Section 2601, which directs that seized property, other than contraband, shall be subject to sale after liability to sale shall have been established by proper administrative or judicial proceedings in conformity with the provision of said Code."

Then the Supreme Court reasoned that the remedy prayed for in the Court of First Instance was one in equity, and the validity of the seizure pro-

[45] G.R. No. 12518, October 28, 1961, 3 SCRA 313 (1961).
[46] G.R. No. 19180, October 31, 1963, 9 SCRA 429 (1963).

ceedings pending before the Collector of Customs. Court of First Instance jurisdiction was invoked to stop the scheduled auction sale and to secure the release of the goods under bond. Such relief, said the Court, is interlocutory in nature, sanctioned by Section 2301 of the Tariff and Customs Code.

The Supreme Court then asked: Did the Court of First Instance gravely abuse its discretion in issuing the orders complained of? The answer is "no", for according to the Court, there is no clear showing that the importations are prohibited by law. On the other hand, the Collector in fact agreed originally to release the same upon filing of sufficient surety bonds. The Court further justified the requirement for surety bond to obtain release of the perishable goods as best protective of the interest of the government, instead of selling them at auction. The latter recourse would bring less funds because a considerable portion of the fruits have deteriorated and the price obtainable would be much less than before. And the requirement of cash bond instead of surety was not approved by the Supreme Court. On this point, it stated:

> ". . . . a bond when required by law, is commonly understood to mean an undertaking that is sufficiently secured, and not cash or currency. According to respondents this is the established practice in the Bureau of Customs . . . . In the second place, to require the private respondents here to put up cash in the sum of P513,865.46 is prohibitive and unrealistic, and amounts to arbitrary exercise of discretion under the circumstances of the case, assuming that the matter is discretionary."

This case teaches the lesson, therefore, (1) that the Tax Court has no jurisdiction to issue writ of injunction except in the exercise of its appellate jurisdiction under Republic Act 1125; (2) that in matters where the validity of the seizure proceedings is not in issue but the equitable remedy of injunction to stop an auction sale scheduled in violation of the procedural requirements of notice and hearing, the Court of First Instance, not the Tax Court has jurisdiction; and (3) notice and hearing are elements of due process in seizure proceedings and auction sale of the seized importations can be enjoined if these are not observed by the Collector of Customs.

VII. MISCELLANEOUS

Discussed under this heading is a case[47] touching very slightly on a provision of the Tax Code. No tax question is involved.

The provision mentioned is Section 334, Tax Code, that requires financial statements properly audited by Certified Public Accountants to accom-

[47] Testate Estate of Gliceria A. del Rosario (deceased), Consuelo S. Gonzales-Precilla, Admx. v. Dr. Jaime Rosario & Children, et al., G.R. No. 29306, May 29, 1970, 33 SCRA 228 (1970).

pany income tax returns in certain instances. In the special proceedings on the testate estate of a deceased, the administrator submitted to the Court of First Instance itemized statement of income and expenses for the year. Certain claimants opposed the accounting on the ground of lack of certification by independent public accountants, invoking Section 334, Tax Code, for their ground. There is no merit in the opposition, held the Supreme Court, saying:

> "The requirement in Section 334 of the Tax Code, as amended, that the balance sheet, profit and loss statements, etc., of corporations, companies, partnerships, or persons whose gross quarterly sales, earnings, receipts or output exceed ₱25,000 should be certified by independent certified public accountant, does not apply to statements of income and expenses submitted to the court by the administrator in a special proceeding for the settlement of the estate of a decedent. An examination of the said legal provision shows that the requirement is only for tax purposes.
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> "x x x x Nowhere from its (Sec. 334, Tax Code) provisions can it be implied, even remotely, that Congress intended Section 334 to apply as well to accounts rendered to the court by the administrator of an estate. Neither is there, as conceded by parties, any provision in the Rules of Court governing the matter . . . ."

This case, in effect, is a reminder that provisions of the Internal Revenue Code pertain to matters of taxes and taxation and should not be invoked to govern special proceedings or other matters.