WADING THROUGH THE MURKY WATERS OF STATE EXACTIONS

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I. Introduction

That taxes are distinct from regulatory fees, is axiomatic; as held in *Progressive Development Corp., v. Quezon City*[1]:

> x x x [L]icense fee is a legal concept distinguishable from tax: the former is imposed in the exercise of police power primarily for purposes of regulation, while the latter is imposed under the taxing power primarily for purposes of raising revenues. Thus, if the generating of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax.

It would seem that the two legal bases, i.e. police power and power of taxation, for the power of exaction are confined within separate "watertight compartments." As each is subject to different constitutional and inherent limitations, the structural integrity of these compartments is essential, affecting directly, as it does, the rights and remedies of the affected parties particularly when it involves the amount of the exaction. Three interrelated factors appear to have punctured the barrier between these powers: the increasing role of administrative agencies in governance, the growing difficulty of applying the primary purpose rule, and the sclerotic apprehension of the judiciary in applying a less atavistic framework in reviewing the lawfulness of these impositions. The challenge posed by this pursuit was underscored by J. Temple in *City of Troy v. Western Union Telegraph Co.*:[2]

> So the two classes of cases, one of which is plainly taxation, and the other a sum paid for a permit, may be approximated until it is difficult

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[1] G.R. No. 36081, 172 SCRA 629, 635, Apr. 24, 1989.

[2] 51 So. 523 (164 Ala. 482).

> or impossible to say to which class a given case may belong. These difficulties to discriminate the principles underlying different cases constantly included in different classes, and to which the same rule of decision cannot be applied, constitute the perpetual debating grounds of the law, and occasion much of the confusion in the decisions. But, as was remarked by Judge Marshall, because we cannot easily draw the line does not prove that there is no difference in principle. No one fails to note the contrast between the light of day and the darkness of night, but no one is able to draw the line between daylight and darkness, or note the precise instant when one ends and the other begins.

This article will discuss the evolution of the power of exaction, the legal problems wrought by its Janus-faced mutation, and present a practicable means of wading through its murky penumbra. American cases will be cited and examined alongside domestic jurisprudence because of their persuasive value, considering that our income tax laws evolved from American tax laws.[3]

II. TAXES AND REGULATORY FEES DISTINGUISHED

Jurisprudence distinguishes taxes from regulatory or license fees. As to source of power, regulatory fees are pursuant to police power, while taxes proceed from the power of taxation:

> The term "tax" applies — generally speaking — to all kinds of exactions which become public funds. The term is often loosely used to include levies for revenue as well as levies for regulatory purposes. Thus license fees are commonly called taxes. Legally speaking, however, license fee is a legal concept quite distinct from tax; the former is imposed in the exercise of police power for purposes of regulation, while the latter is imposed under the taxing power for the purpose of raising revenues.[4]

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[3] Income taxation was first known in the Philippines in 1913 when the United States Income Tax Law was extended to the Philippines by Section II-m of that law. Notwithstanding the subsequent piecemeal amendments introduced by Congress, our tax law is still a mirror of its American forebear. J.F. Rivera, TAXATION SELF-TAUGHT at 4-5 (1966 ed.). In several cases, our Supreme Court pointed out the American origins of our tax laws, and applied American cases, Zamora v. Collector of Internal Revenue, G.R. No. 15290, 118 Phil 164, May 31, 1963; Court of Industrial Relations v. Prieto, G.R. 13912, 109 Phil 592, Sept. 30, 1960; Greenland v. Meer, 77 Phil. 394, Sept. 27, 1946; and Court of Industrial Relations v. Binalbagan Estate G.R. No. 12752, 121 Phil 1, Jan. 30, 1965.

[4] Compania General de Tobacos de Filipinas v. City of Manila, G.R. No. 16619, June 29, 1963. *See also* Serafico v. Treasurer of Ormoc City, G.R. No. 24813, Apr. 28, 1969.

As to purpose, regulatory fees promote general welfare, while taxes are for raising revenues:

> The differentiating factor between a tax and other pecuniary burdens is the purpose to be subserved. Taxes are for the purpose of raising revenue. Unlike a tax, other pecuniary burdens like regulatory fees have not for its object the raising of revenue but looks rather to the enactment of specific measures that govern the relations not only as between individuals but also as between private parties and the political society. A tax is neither a penalty that must be satisfied nor a liability arising from contract. Much less can it be confused or identified with a license or a fee as a manifestation of an exercise of the police power.[5]

As to determination of the amount, regulatory fees must be commensurate to the cost of regulation, while taxes are inherently unlimited:

> In the absence of special authority to impose a license fee or tax for revenue, the fee for licenses for the regulation of useful occupations or enterprises may only be of a sufficient amount to include the expense of issuing the license and the cost of the necessary inspection and police surveillance, taking into account not only the expense of direct regulation but also incidental consequences.[6]
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> [The power to tax is] unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who are to pay it.[7]

Finally, failure to pay a license fee granted or required before a certain thing can be done renders the act illegal, while failure to pay tax does not make one's activity illegal, only the act of non-payment.[8]

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[5] Republic v. Philippine Rabbit Bus Lines Inc., G.R. No. 26862, Mar. 30, 1970.

[6] Cuunjieng v. Patstone, G.R. No. 16254, 42 Phil 818, Feb. 21, 1922.

[7] Mactan Cebu International Airport Authority v. Marcos, G.R. No. 120082, 261 SCRA 667, Sept. 11, 1996.

[8] Jose Alejandro, LAW ON TAXATION 5 (1970).

As earlier stated, the line separating these two types of exactions is extremely hard to draw in some cases. But this distinction must be maintained, as will be explained in the next section.

III. CONSTITUTIONAL LIMITATIONS: REASONABLENESS OF AMOUNT

Police power, according to Professor Freund, is "the power of promoting the public welfare by restraining and regulating the use of liberty and property."[9] Taxation, on the other hand, is "the power by which the sovereign raises revenue to defray the necessary expenses of government."[10] The validity of a police measure is primarily gauged by two tests: whether the interests of the public generally, as distinguished from those of a particular class, require the exercise of the police power, and whether the means employed are reasonable necessary and not unduly oppressive upon individuals.[11] This essentially translates to the due process and equal protection limitations of the Constitution.

The power of taxation is also limited by due process and equal protection, and in addition, is subject to inherent limitations, viz.: it must be for public purpose, the power cannot be delegated, territoriality, non-taxability of the Government, and international comity.[12] The Constitution also further proscribes taxation against certain institutions.[13]

It is important to distinguish the nature of the imposition because the distinction between police power and the power to tax means that they are also subject to certain distinct constitutional limitations. The appropriateness of the grounds for assailing a regulatory fee as distinguished from a tax reflects the distinctions in the constitutional limits on the two great powers of taxation and police power.

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[9] Vicente G. Sinco, PHILIPPINE POLITICAL LAW 579 (1962). Police power is also defined as "the power to make and enforce all wholesome and reasonable laws and regulations necessary to maintain the public health, comfort, safety, and welfare of society." 51 AM JUR § 68, 96.

[10] Messer v. Langm 129 Fla 546 (176 So 548), cited in 51 AM JUR § 2, 34.

[11] *See* U.S. v Toribio, G.R. No. 5060, 15 Phil. 85, Jan. 26, 1910; Fabie v. City of Manila, G.R. No. 6583, 21 Phil. 486, Feb 16, 1912; and Case v. Board of Health, G.R. No. 7595, 24 Phil. 250, Feb. 4, 1913.

[12] *See* Benjamin Aban, LAW OF BASIC TAXATION IN THE PHILIPPINES 53 – 65 (1994).

[13] *See* CONST. art. VI, § 28(3).

To illustrate, a State cannot charge to the railroad company the eye-examination fees that should be paid by the company employees examined, pursuant to a law, in the exercise of police power, requiring such an exam. In an American case, it was held that:

> [t]he statute under consideration attempts to impose on the railroad corporations, without their consent, and whether they will or not, the expense of the examination of certain classes of their employees, for the purpose of determining their fitness for the service. Is this not a mere legislative edict that one person (artificial) shall, without his consent, pay for services rendered to another? This is not 'due process of law.' Private property shall not be taken for private use.[14]

Had the exaction been for revenue, the argument that it constituted an undue taking of private property would not have been countenanced. In another case,[15] a tax imposed upon dogs for the purpose of raising a common fund for repairing losses that may be inflicted by them upon sheep was held as a valid exercise of police power and therefore the inherent limitation that taxes should be imposed only for public purpose was not applicable.

This paper will not discuss the nuanced distinctions regarding these general limitations, but will focus instead on the effect the nature of the imposition have on the reasonableness of the amount exacted. The case of *Montgomery v. Kelly*[16] elucidates this point:

> It is sometimes difficult to determine with accuracy whether a given enactment provides for a license as a police measure or authorizes it simply as a privilege tax on certain occupations, though it is often important to determine this question, in order to properly pass upon the validity of the law; for the distinction is clearly recognized, and it is also recognized that the amount which may be fixed for a license under the police power is limited, x x x while a wider latitude is allowed when it is a revenue measure, and this court has decided that, where power is granted to a municipal corporation to license for police purposes merely, it cannot be used as a source of revenue.

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[14] Louisville N & R Co. v. Alabama, 85 Ala. 619 (5 So. 311).

[15] McGlone v. Womack, 129 Ky 274 (111 SW 688).

[16] 142 Ala 552 (38 So 67).

As regards taxes, the issue of the reasonableness of the amount has been consistently held to be a question for the taxing power.[17] In other words, it is virtually unlimited. Cooley's discussion is illuminating:

> If the taxes are oppressive or unjust, the only remedy is the ballot box and the election of new representatives. The judiciary can afford no redress against oppressive taxation, so long as the legislature imposing it, shall keep within limits of legislative authority, and violate no express provision of the Constitution. The necessity will admit of no property or other conflicting right in the citizen while it remains satisfied.[18]

The Courts would only step in if the amount of the tax is such that it is tantamount to a prohibition or restraint of trade upon any legitimate business or constitutionally protected occupation. An example of this is the case of *Murdock v. Pennsylvania*[19], wherein it was held that, as a license fee is fixed in amount and unrelated to the receipts of the taxpayer, the license fee, when applied to a religious sect, was actually being imposed as a condition for the exercise of the sect's right under the Constitution. Hence, the said license fee 'restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise.'[20] Also, the computation of the amount of exaction must not be such that it would be discriminatory or oppressive upon a particular class. This was illustrated in the case of *Minneapolis Star v. Minnesota Commissioner of Revenue*,[21] which was cited in the case of *Tolentino v. Secretary of Finance:*

> Minnesota imposed a tax on the sales of goods in that state. To protect the sales tax, it enacted a complementary tax on the privilege of 'using, storing or consuming in that state tangible personal property' by eliminating the residents' incentive to get goods from outside states where the sales tax might be lower. The Minnesota Star Tribune was exempted from both taxes from 1967 to 1971. In 1971, however, the state legislature amended the tax scheme by imposing the 'use tax' on the cost of paper and ink used for publication. The law was held to have

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[17] *See* Mactan Cebu International Airport Authority v. Marcos, G.R. No. 120082, 261 SCRA 667, Sept. 11, 1996.

[18] *Cited in* Alejandro, *supra* note 8, at 3.

[19] 319 U.S. 105, 113 (87 L.Ed. 1292). *See also* American Bible Society v. City of Manila, G.R. No. 9637, 101 Phil. 386, Apr. 30, 1957.

[20] *Cited in* Tolentino v. Secretary of Finance, G.R. No. 115455, 235 SCRA 630, Aug. 25, 1994.

[21] Minneapolis Star v. Minnesota Commissioner of Revenue, 460 U.S. 575 (75 L. Ed. 2d 295).

> singled out the press because (1) there was no reason for imposing the 'use tax' since the press was exempt from the sales tax and (2) the 'use tax' was laid on an 'intermediate transaction rather than the ultimate retail sale.' Minnesota had a heavy burden of justifying the differential treatment and it failed to do so. In addition, the U.S. Supreme Court found the law to be discriminatory because the legislature, by again amending the law so as to exempt the first $100,000 of paper and ink used, further narrowed the coverage of the tax so that 'only a handful of publishers pay any tax at all and even fewer pay any significant amount of tax.' The discriminatory purpose was thus very clear.[22]

Indeed, taxes have the capability to destroy, but it is now settled that "the right to so combine the police regulation and the taxing power as to levy a license tax to discourage and even break up a business applies only to those lines of business which, while they are tolerated, are recognized as being hurtful to public morals, productive of disorder, or injurious to the public."[23] In the case of *Consolidated City of Jacksonville v. Dusenbery*,[24] a $1,000 occupational license fee for fortune tellers, clairvoyants, astrologists, etc, asserted by the city as a revenue tax, was held invalid for being excessive and unreasonable.

For a regulatory fee, the reasonableness of the amount of the imposition is confined to a more narrow degree. It is generally held that the license fee required by an ordinance designed as a police regulation must not exceed the cost of issuing the license and the additional cost of inspection and supervision. A qualification is in order:

> However, this rule is subject to the qualification that the licensing authority is not limited, in fixing the amount of the fee, to the expense of direct regulation alone, but may adjust the fee to cover the cost of all incidental consequences which may reasonably subject the public to expense as a result of the conduct of the business licensed. The nature of the business and the necessity, character and extent of the regulations are the dominating elements which determine the reasonableness of the fee to be paid.[25]

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[22] Tolentino v. Secretary of Finance, G.R. No. 115455, 235 SCRA 630, Aug. 25, 1994.

[23] Tiedeman on Limitations of Police Power, pp. 273, 277, 278; 21 Am. & Eng. Ency. Law (2d Ed.) p. 778.

[24] District Court of Appeals of Florida, No. JJ-28, Aug. 30, 1978.

[25] State ex rel City of Bozeman v. Police Court of City of Bozeman.

It is difficult to find cases supporting the proposition that the amount of regulatory fee should be commensurate to the costs of regulation, otherwise they are invalid for unreasonableness. Several cases will show that the Courts, instead of invalidating an excessive exaction, having the nature of a police power regulation, upholds them as being revenue taxes. The Courts examine the proportionality of the collection and the manner of disposition of funds[26]; if it is in excess of the cost of regulation, it is a tax. This is perfectly illustrated in the case of *Philippine Airlines, Inc. v. Edu*[27] where the Court, noting that the registration fees imposed by the Land Transportation and Traffic Code is used largely to raise funds for the construction and maintenance of highways, held it as a tax. In *Smith v. Mahoney*,[28] an excessive license fee for cattle grazing was invalidated, not because of its unreasonableness, but because it violated the taxing power limitation of equality, uniformity, and non-discrimination. Justice Potter in the case of *Fletcher Oil Company v. Bay City* best articulated this process of ratiocination:[29]

> The imposition of license fees as a condition to issuing a license when plainly intended as police regulations will be upheld if the revenue derived therefrom is not disproportionate to the cost of issuing the license and the regulation of the business licensed. Anything in excess of an amount which will defray such necessary expenses cannot be imposed under the police power alone, because it then become a revenue measure. What is a reasonable license fee must depend upon the sound discretion of the legislative body imposing it having reference to the circumstances and necessities of the case. It will be presumed the amount of the fee is reasonable unless it contrarily appears upon the face of the ordinance, by-law, or law itself, or is established by proper evidence. In determining whether a fee required for a license is excessive or not, the expense or amount of regulatory provisions and the nature of the subject of regulation should be considered, and, if the amount is wholly out of proportion to the expense involved, it will be declared a tax. If revenue is incidentally derived which is not so disproportionate as to make the fee charged unreasonable there can be no objection.[30]

The application of this approach may, if not properly qualified, be anomalous. In theory, it is beyond cavil that it would be easier to invalidate

[26] This will be referred to as the *disposal* test.
[27] G.R. No. 41383, 164 SCRA 320, Aug. 15, 1988.
[28] 22 Ariz 342 (197 Pac 704).
[29] 247 Mich. 572 (226 N. W. 248, 250).
[30] This will be referred to as the ***disproportionality*** test.

as unreasonable an excessive regulatory fee compared to an excessive tax, but the use of the *disproportionality* and *disposal* tests makes it easier for the Courts in fact to strike down a revenue tax than a regulation fee. An example of the possibility of this determination going awry is the case of *Tio v. Videogram Regulatory Board*[31] where videogram operators assailed the exaction of 30% of the gross receipts imposed by P.D. 1987 creating the Videogram Regulatory Board, for being harsh and oppressive, and confiscatory.

The Court defended the decree by saying that since it was a tax, "the power to impose taxes is one so unlimited in force and so searching in extent, that the courts scarcely venture to declare that it is subject to any restrictions whatsoever, except such as rest in the discretion of the authority which exercises it." A more careful scrutiny of the rationale of the law, and applying the proper tests, would reveal that the fee was primarily regulatory.[32] Without necessarily saying that the Court was wrong, the proper designation of the nature of the power would have allowed the Court to apply the appropriate reasoning, e.g. as an exercise of police power it was without due process because it amounted to an oppression of a legitimate business, and not cower behind the wide blanket of taxing power justifications.

IV. INHERENT LIMITATION: NON-DELEGABILITY

The issue of whether or not an imposition is a tax or a license fee assumes greater significance when it involves a delegated power to levy such exaction. An exorbitant license fee may be invalidated because its amount is so disproportionate as to make it a revenue tax and the taxing body was not expressly authorized to levy such tax.[33] As Cooley stated:

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[31] G.R. No. 75697, 151 SCRA 208, June 18, 1987.

[32] The aim of Pres. Dec. No. 1987 was essentially to regulate and discourage, through prohibitive taxes, the videogram business; paragraph 1 of its Preamble encapsulates this: "WHEREAS, the proliferation and unregulated circulation of videograms including, among others, videotapes, discs, cassettes, or any technical improvement or variation thereof, have greatly prejudiced the operations of moviehouses and theaters, and have caused a sharp decline in theatrical attendance by at least forty percent (40%) and a tremendous drop in the collection of sales, contractor's specific, amusement and other taxes, thereby resulting in substantial losses estimated at P450 Million annually in government revenues;" 151 SCRA 208, 212 (1987).

[33] *See e.g.* City of Portage v. Harrington, 598 N.E. 2d 634 (Ind. Ct. App. 3d Dist. 1992): "We conclude, therefore, that the $75.00 per dock slip fee charged by the Port Authority in this case was not

> The distinction between the power to license, as a police regulation, and the same power when conferred for revenue purposes, is of the utmost importance. If the power be granted with a view to revenue, the amount of the tax, if not limited by the charter, is left to the discretion and judgment of the municipal authorities; but if it be given as a police power for regulation merely, a much narrower construction is adopted; the power must then be exercised as a means of regulation, and cannot be used as a source of revenue.[34]

The case of *City of Iloilo v. Villanueva*[35] is often cited to illustrate this limitation:

> [T]he license fees charged therein are not merely for regulation but for revenue, because the fee of P24 per annum charged therein for every apartment far exceeds "the expense of issuing the license", plus "the cost of inspection or police or police surveillance", and other incidental expenses. Thus, for the first house which consists of 11 apartments, the defendants would have to pay a license fee of P264 annually; for the second house which consists of 14 apartments, the fee would be P308 annually; for the third house which consists of 14 apartments, the fee would be P308 annually; for the house which consists of 7 apartments, and the fourth which consists of 2 apartments, the fee would be P216 annually. All in all, defendants would have to pay a license tax fee amounting to P888 per annum. This, in addition to the fees that may be exacted from many other residents similarly situated, would constitute a sizeable sum of revenue which would engross the coffers of the City. These fees cannot therefore be considered as merely for regulation purposes as contended.

The Court in this case did not invalidate the law for being excessive, *per se*, but because its excessiveness made the imposition a tax and the city was not expressly granted the power to raise revenue through taxes.

> It is well-settled that a municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or

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limited to the reasonable costs of issuing licenses, or patrolling or regulating boaters on the Waterway. The extra charges levied under Ordinance 90-19 were specifically earmarked for a dredging project unrelated to these activities. The charges levied under the ordinance, therefore, exceed the statutory authorization and are contrary to law."

[34] *Cited in* North Hudson Co. Railway v. Hoboken, 41 N.J.Law (12 Vroom) 71, 79, 81.

[35] G.R. No. 12695, 105 Phil 337, Mar. 23, 1959.

> the municipality cannot assume it. And the power when granted is to be construed strictissimi juris. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions — all these — have no place in the interpretation of the taxing power of a municipal corporation.' (Icard vs. City of Baguio, 83 Phil., 870; 46 Off. Gaz. 11 Sup., 320; Medina vs. City of Baguio, 91 Phil., 854; 48 Off. Gaz., [11] 4769; Yu vs. City of Lipa, 99 Phil. 975; 54 Off. Gaz., [13] 4055). And it not appearing that the power to tax owners of tenement houses is one among those clearly and expressly granted to the City of Iloilo by its Charter, the exercise of such power cannot be assumed and hence the ordinance in question is ultra vires insofar as it taxes a tenement house such as those belonging to defendants.

Secondly, an exaction itself may also be assailed for being an undue delegation of taxing power. Since the validity of the amount of exaction would depend on whether the power has been merely delegated or not, the following corollary issues must be discussed: what type of exactions can be validly delegated? What are the limitations of a delegated power to impose an exaction?

The fundamental rule is that, an exercise of a power that essentially belongs to the legislature, cannot be delegated. As regards the police power of the state, the principle behind the non-delegation doctrine rests not only on the separation of powers, but also on the nature of the power itself, i.e. as the power was reposed on him, it becomes a duty of the delegate to do it himself. The case of *United States v. Barrias*[36] provides the classic ratiocination:

> This doctrine is based on the ethical principle that such a delegated power constitutes not only a right but a duty to be performed by the delegate by the instrumentality of his own

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[36] 11 Phil 327, 330 (1908), bases on this passage from Cooley "One of the settled maxims in constitutional law is, that the power conferred upon the legislature to make laws can not be delegated by that department to any other body or authority. Where the sovereign power of the State has located the authority, there it must remain; and by the constitutional agency alone the laws must be made until the constitution itself is changed. The power to whose judgment, wisdom, and patriotism this high prerogative has been entrusted can not relieve itself of the responsibility by choosing other agencies upon which the power shall be developed, nor can it substitute the judgment, wisdom, and patriotism of any other body for those to which alone the people have seen fit to confide this sovereign trust." Cooley's Constitutional Limitations, 6th ed., p. 137.

judgment acting immediately upon the matter of legislation and not through the intervening mind of another.

A general exception to this rule is the delegation in favor of administrative agencies, which is either referred to as subordinate legislation, and filling-in of details. This reflects the modern tendency to be more liberal in allowing grants of discretion to administrative agencies;[37] the Court in one case[38] explained:

> The principle of non-delegation of powers is applicable to all the three major powers of the Government but is especially important in the case of the legislative power because of the many instances when its delegation is permitted. The occasions are rare when executive or judicial powers have to be delegated by the authorities to which they legally pertain. In the case of the legislative power, however, such occasions have become more and more frequent, if not necessary. This had led to the observation that the delegation of legislative power has become the rule and its non-delegation the exception.
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> The reason is the increasing complexity of the task of government and the growing inability of the legislature to cope directly with the myriad problems demanding its attention. The growth of society has ramified its activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems attendant upon present-day undertakings, the legislature may not have the competence to provide the required direct and efficacious, not to say, specific solutions. These solutions may, however, be expected from its delegates, who are supposed to be experts in the particular fields assigned to them.
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> The reasons given above for the delegation of legislative powers in general are particularly applicable to administrative bodies. With the proliferation of specialized activities and their attendant

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[37] *See* Anno: 92 ALR 410.

[38] Eastern Shipping Lines v. POEA, G.R. No. 76633, 166 SCRA 533, Oct. 18, 1988. Pangasinan Transportation Co., Inc. v. Public Service Commission, G.R. No. 47065, 70 Phil 221, June 26, 1940, states the classic justification: "with the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency toward the delegation of greater powers by the legislature, and toward the approval of the practice by the courts."

> peculiar problems, the national legislature has found it more and more necessary to entrust to administrative agencies the authority to issue rules to carry out the general provisions of the statute. This is called the 'power of subordinate legislation.'
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> With this power, administrative bodies may implement the broad policies laid down in a statute by 'filling in' the details which the Congress may not have the opportunity or competence to provide. This is effected by their promulgation of what are known as supplementary regulations, such as the implementing rules issued by the Department of Labor on the new Labor Code. These regulations have the force and effect of law.

To be valid, the delegation must meet the following test enunciated in *Pelaez v. Auditor General*:[39]

> Although Congress may delegate to another branch of the government the power to fill in the details in the execution, enforcement or administration of a law, it is essential, to forestall a violation of the principle of separation of powers, that said law: **(a) be complete in itself — it must set forth therein the policy to be executed, carried out or implemented by the delegate — and (b) fix a standard — the limits of which are sufficiently determinate or determinable — to which the delegate must conform in the performance of his functions.** Indeed, without a statutory declaration of policy, the delegate would, in effect, make or formulate such policy, which is the essence of every law; and, without the aforementioned standard, there would be no means to determine, with reasonable certainty, whether the delegate has acted within or beyond the scope of his authority. Hence, he could thereby arrogate upon himself the power, not only to make the law, but, also — and this is worse — to unmake it, by adopting measures inconsistent with the end sought to be attained by the Act of Congress, thus nullifying the principle of separation of powers and the system of checks and balances, and, consequently undermining the very foundation of our Republican system.

The following guidelines, distilled from commentaries and jurisprudence, are helpful in ascertaining the validity of an imposition under police power by an administrative agency:

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[39] G.R. No. 23825, 15 SCRA 569, Dec. 24, 1965.

Agencies, in order to become self-sufficient, are generally given the power to charge fees for each service or thing of value that it provides.[40] But this ability to charge fees does not include the ability to levy taxes.[41]

The fee must be reasonable, commensurate to the "costs to the government, the value of the service or thing to the recipient, public policy or interest served, and other relevant facts. Both direct and indirect costs should be considered."[42]

"[T]he power of boards and officials in respect of license requirements and impositions does not exist in the absence of legislative authorization."[43]

If the power arises exclusively out of a statute, the statute must be strictly followed in the determination of its amount. [44] Otherwise, it may be struck down for being *ultra vires*.

Under the non-delegation doctrine, the legislature cannot delegate the power to make laws, thus, arbitrary power to grant or withhold licenses cannot be conferred upon an administrative agency. If the statute does not prescribe definite rules and conditions for the guidance of the officials exercising discretionary power, it will be held invalid. However, it is not always necessary that the statute prescribe specific rules of action; some situations require the vesting of discretion where it is difficult or impracticable to specify a definite and comprehensive rule. This also applies when the discretion relates to the administration of licensing requirements as police regulation and is necessary to protect the public morals, health, safety, and general welfare.[45]

Discretion to grant or refuse license may be conferred with respect to determining the personal fitness of the subject or applicant.[46] Hence, varying fees may be charged depending on a reasonable basis of classification, and such variation will not be invalidated for being a discriminatory tax. But the law should lay down a definite standard.

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[40] 2 AM JUR 2d, 89.
[41] *Id. citing* National Cable TV Association v. U.S., 415 US 336.
[42] *Id.*
[43] 33 AM JUR 377, *citing* Applewood v. Dosch, 239 Pa. 470 (86 A 1070).
[44] Kroger Grocery & baking Co. v. City of St. Louis, 341 Mo. 62 (106 S.W.2d 435).
[45] 33 AM JUR 377-378.
[46] 33 AM JUR 380.

As regards the fixing of the amount of the regulatory fees, certain incidental powers are usually conferred by implication. These are:

> [An] express authority to license a business or vocation, and to promulgate regulations for the enforcement of the license requirements and the collection of the license tax, carries with it the right to impose penalties as an aid to such enforcement.[47]

"The power and authority to license necessarily implies the right to fix the amount of the license fee."[48] Certainly, this power is subject to some qualifications, the case of *Schmidt v. Indianapolis*[49] illustrates its application. It involves an appeal by Schmidt who was convicted of violating an ordinance which prohibits the conduct or maintenance within the city of a brewery, or a depot or agency of a brewery, without a license. Appellant assails the $1,000 license fee as being excessive. The Court dismissed this contention, it held:

> It is true that as a general principle the amount which may be exacted for a license proper under the police power must be limited and reasonably measured by the cost of the issuance of the license, and of the regulation and inspection for which provision is made, while a wider latitude is allowed in imposing a special tax upon a particular occupation or business as a source of revenue. **The general doctrine properly applies only to useful occupations which, being not detrimental to the public, cannot be unduly restricted or substantially prohibited under the guise of a police regulation.** The courts now quite generally recognize that as to those lines of business which are hurtful to public morals, productive of disorder, or injurious to the public, but nevertheless tolerated, the police power may be rightfully exercised in the levy of such a license tax as will limit and discourage the business. The power and authority to license necessarily implies the right to fix the amount of the license fee. The power to license and to fix the fee to be charged being lodged in the municipality, the amount to be exacted is not strictly a judicial question, and the action of the municipal body in fixing the license fee will be disturbed only in case of a manifest abuse of its power. (emphasis supplied, internal citations omitted).

Thus, only when the exaction, in the exercise of a police power, is imposed upon a line of business injurious to public welfare, can the delegate exercise unfettered power in fixing the amount of the fee. This reflects the

[47] 33 AM JUR 381, *citing* Denver City R. Co. v. Denver, 21 Colo 350 (41 P 826).
[48] *Id.*
[49] 168 Ind. 631 (80 NE 632).

general rule that the reasonableness of the fee under police power depends on the nature of the subject being regulated. Note that the case of *Tio v. Videogram*[50] could have been decided in this light without the need to declare that the imposition is a tax.

"The reasonable cost of granting a license may be properly charged to the person procuring it."[51] In the case of *Welch v. Hotchkiss*,[52] a penalty was imposed upon the defendant for failure to pay the $.50 license fee imposed by the New Haven ordinance for the building or enlargement of any building within the fire limits. The charter of the city empowered it to make laws to protect the city from fire, to establish districts within which it should not be lawful to erect, enlarge or elevate any wooden building except by license of the city, and to enact ordinances relating to the subject, and prescribe penalties for their violation. Hotchkiss filed a demurrer on the ground that the city was not empowered to charge a license fee. The court held:

> It may be conceded that we do not find, in express terms, such a power in the charter; but **we think it is there nevertheless; not so much, perhaps, by necessary implication, as by intendment, gathered from the presumption that the legislature would not deem it necessary to specify matters of so little importance, and which are incidental in their nature**, but which, notwithstanding, are convenient, if not essential, to the full enjoyment of the powers expressly granted.
>
> It seems equitable and just that expenses of this character should be paid by those for whom, and at whose instance, they were incurred, and we do not consider it a strained interpretation of the charter to hold that the legislature so intended. We think that this proposition will not be disputed; that whenever a municipal corporation is authorized to made by-laws relative to a given subject, and to require of those who desire to do any act or transact any business pertaining thereto to obtain a license therefor, the reasonable cost of granting such licenses may be properly charged to the persons procuring them, although the power to do so is not expressly given in the charter.(emphasis supplied)

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[50] G.R. No. 75697, 151 SCRA 208, June 18, 1987.

[51] If the power arises exclusively out of a statute, the statute must be strictly followed in the determination of its amount.[51]

[52] 39 Conn 140 (12 Am Rep 383).

As regards the taxing power, delegation thereof appears to be more strictly proscribed. The Court in *Pepsi-Cola Bottling Company v. Municipality of Tanauan*[53] stated that:

> The power of taxation is an essential and inherent attribute of sovereignty, belonging as a matter of right to every independent government, without being expressly conferred by the people. It is a power that is purely legislative and which the central legislative body cannot delegate either to the executive or judicial department of the government without infringing upon the theory of separation of powers.

In dealing with the validity of a delegation of power to tax, the following guidelines should be noted:

A distinction must be drawn between the elements that are an imposition of a tax and the ministerial and administrative steps taken for its assessment and collection; the latter being delegable, the former not. According to Cooley,[54] there are two parts of a tax system: the imposition, and the assessment and collection. Those activities encompassed in the former are legislation, and is non-delegable, and those involving the latter is administrative, and is delegable. Hence, a statute which gives to administrative officers a discretionary power[55] to employ a certain procedure for the assessment or collection of taxes, or vests in administrative tax officials duties of a judicial or "quasi-judicial" nature, such as fact-finding as a basis for administrative action,[56] has been held to be non-objectionable.

It is recognized that Congress may expressly authorize the President to fix within specified limits, and subject to such limitations and restrictions as it may impose, tariff rates, import and export quotas, tonnage and wharfage dues and other duties or imposts within the framework of the national development program of the government.[57]

Another notable exception involves local government units; it is justified by two mutually exclusive grounds: (1) by an express constitutional

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[53] G.R. No. 31156, 69 SCRA 460, Feb. 27, 1976.

[54] Aban, *supra* note 12, at 56.

[55] Picton v. Cass County, 13 ND 242 (100 NW 711), *cited in* 71 AM JUR 2d, 470.

[56] Berdahl v. Gillis, 81 SD 436 (136 NW2d 633), *cited in* 71 AM JUR 2d, 470.

[57] CONST. art. VI, § 28(2).

provision,[58] or (2) if it has been exercised for so long a time that its existence is not open to dispute.[59]

Where a legislature enacts a specific rule for fixing a rate of taxation, by which rule the rate is mathematically deduced from facts and events occurring within the year and created without reference to the matter of that rate, there is no abdication of the legislative function, but, on the contrary, a direct legislative determination of the rate.[60]

An aspect of the taxing power may not be considered legislative and non-delegable if in making such delegation, the legislature retains sufficient and proper control over those elements of the taxing power which are nondelegable.[61]

The legislature may pass a tax law to become operative on the happening of a certain condition or after a certain period, such as the result of a plebiscite in the territory within which the law will operate. This has been upheld against the contention that it was an illegal delegation of taxing power.[62]

One can argue that the principle underlying the exceptions to the non-delegability of police power should likewise apply to the power of taxation. This theory has merit. The discretion granted to administrative agencies in the exercise of police power, does not really derogate from the

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[58] CONST. art. X, § 5 provides, "Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments."

[59] In the case of Pepsi v. Tanauan, the Court held that "[l]egislative powers may be delegated to local governments in respect of matters of local concern. This is sanctioned by immemorial. By necessary implication, the legislative power to create political corporations for purpose of local self-government carries with it the power to confer on such local government agencies the power to tax." G.R. No. 31156, 69 SCRA 460, Feb. 27, 1976.

[60] In Michigan C.R. Co. v. Powers 201 US 245, J. Brewer upheld the validity of an ad valorem tax computed by an administrative board in this wise: "It provides the most direct way for ascertaining such average rate,--deducing it from a consideration of all the other rates. No authority is given to the local assessors to apply their judgment to the question of the railroad rate. Their authority in respect to the matter of taxation is precisely the same as it was before and independently of this statute. Their duty is to act according to their judgments in respect to local taxes committed to their charge. x x x Why is it necessary that the legislature be convened to add its formal approval of the integrity of the action of the local officers? May it not entrust the mathematical computation to the state board of assessors, and if so, may it not likewise act upon the assumption that the local assessors will discharge their duties with an eye single to those duties, and irrespective of the effect upon the railroad rate?"

[61] 71 AM JUR 2d 466, citing Gautier v. Ditmar, 204 NY 20 (97 NE 464).

[62] *See* Alcorn v. Hamer, 38 Miss 652.

non-delegability doctrine. It is in fact consistent with it. Analyze the principle:

> 'The true distinction', says Judge Ranney, 'is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.'[63]

This shows that there is in fact no delegation of legislative power; what is delegated are the administrative functions such as determination of facts, filling-in of details, fixing of rates, acts that are of such nature that it would be too cumbersome for the legislature to do themselves. The growing complexity of the process of governance has increased the area of administrative discretion to such extent that the distinction between what is legislative and administrative has become murky. This is compounded by the fact that the completeness and sufficiency of standards test has been relaxed to the point that these standards have become too broad[64] or even implied.[65]

Clearly, the non-application of the delegation to administrative agencies to the exercise of taxing power, rests not so much on the unacceptability of its underlying principle - because it is not in fact a delegation of such power - but on the inordinate liberality with which this exception is now applied. Hence, it can be argued that it is possible that the power to tax, not merely to administer it,

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[63] Cincinnati, W. & Z. R. Co. vs. Clinton County Comrs., 1 Ohio St., 77, 88. *See also*, Sutherland on Statutory Construction, sec. 68.

[64] "The Court has accepted as sufficient standards "public interest" in *People v. Rosenthal*, "justice and equity" in *Antamok Gold Fields v. CIR*, "public convenience and welfare" in *Calalang v. Williams*, and "simplicity, economy and efficiency" in *Cervantes v. Auditor General*, to mention only a few cases. In the United States, the "sense and experience of men" was accepted in *Mutual Film Corp. v. Industrial Commission*, and "national security" in *Hirabayashi v. United States*." Eastern Shipping Lines Inc. v. POEA, G.R. No. 76633, 166 SCRA 533, Oct. 18, 1988.

[65] "In case of a delegation of rate-fixing power, the only standard which the legislature is required to prescribe for the guidance of the administrative authority is that the rate be reasonable and just. However, it has been held that even in the absence of an express requirement as to reasonableness, this standard may be implied. The inherent power and authority of the State, or its authorized agent, to regulate the rates charged by public utilities should be subject always to the requirement that the rates so fixed shall be reasonable and just. A commission has no power to fix rates which are unreasonable or to regulate them arbitrarily." Philippine Communications Satellite v. Alcuaz, G.R. No. 84818, 180 SCRA 218, Dec. 18, 1989.

pursuant to a law sufficiently complete in itself, and with sufficient standards, can be delegated to an administrative agency.

A case has in fact already been decided in the United States Supreme Court that is on all-fours with this argument: the landmark case of *Skinner v. Mid-America Pipeline Co.*[66] Mid-America Pipeline Company was assessed $53,023.52, pursuant to Section 7005 of the Consolidated Omnibus Budget Reconciliation Act of 1985. The law delegated the power of determining the schedule of fees to the Secretary of Transportation, the latter used the pipeline volume-miles as the most reasonable basis for determining the assessment, and after making its own computations, imposed a fee of $23.99 for gas pipelines and $6.41 for hazardous liquid pipelines. Mid-America assailed the imposition on the ground that it was an unconstitutional delegation of the taxing power of Congress[67]. The District Court countenanced the stand of Mid-America, hence the appeal by the Secretary. A unanimous court reversed the ruling of the District Court, and Justice O' Connor gave the following ratiocination:

> We find no support, then, for Mid-America's contention that the text of the Constitution or the practices of Congress require the application of a different and stricter nondelegation doctrine in cases where Congress delegates discretionary authority to the Executive under its taxing power. In light of this conclusion, we need not concern ourselves with the threshold question that so exercised the District Court whether the pipeline safety users "fees" created by § 7005 are more properly thought of as a form of taxation because some of the administrative costs paid by the regulated parties actually inure to the benefit of the public, rather than directly to the benefit of those parties. Even if the user fees are a form of taxation, we hold that the delegation of discretionary authority under Congress' taxing power is subject to no constitutional scrutiny greater than that we have applied to

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[66] 490 U.S. 212 (1989).

[67] "Mid-America contends -- and the District Court agreed -- that, notwithstanding the constitutional soundness of § 7005 under ordinary nondelegation analysis, the assessment of these pipeline safety user fees must be scrutinized under a more exacting nondelegation lens. When so scrutinized, Mid-America argues, § 7005 is revealed to be constitutionally inadequate. In Mid-America's view, the assessments permitted by § 7005, although labeled "user fees," are actually tax assessments levied by the Secretary on firms regulated by the HLPSA or the NGPSA. Congress' taxing power, Mid-America further contends, unlike any of Congress' other enumerated powers, if delegable at all, must be delegated with much stricter guidelines than is required for other congressional delegations of authority. Mid-America purports to derive this two-tier theory of non-delegation from the text and history of the Constitution, from past congressional practice, and from the decisions of this Court." *Ibid.*

> other nondelegation challenges. Congress may wisely choose to be more circumspect in delegating authority under the Taxing Clause than under other of its enumerated powers, but this is not a heightened degree of prudence required by the Constitution.

The Court applied the same delegation tests applied to delegation of police power. It explained its prior decisions as not inconsistent to this ruling as the court in those cases merely required that there must be a clear intent to delegate the power to tax.[68] *Skinner* has become the doctrine in the U.S. and has been reaffirmed in 3 subsequent cases.[69]

It is submitted that our Court should apply this doctrine in our jurisdiction. Arguably, whether this doctrine is adopted or not, our Supreme Court will arrive at the same result: because in its effort to reconcile its decision with the nature of the exaction, it usually engages in a spurious interpretation thereof, making our exaction laws Janus-faced at the Court's convenience.[70] Indeed, the Constitution expressly authorizes delegations to the President and to local governments, but the principle of *expresio unios est*

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[68] Justice O'Connor explained, "[o]ur decisions in *National Cable Television Assn., Inc. v. United States*, and *FPC v. New England Power Co.* are not to the contrary. In these cases, we considered the provision of the Independent Offices Appropriation Act (IOAA) that allows agencies to collect fees based on '(A) the costs to the Government; (B) the value of the service or thing to the recipient; (C) public policy or interest served; and (D) other relevant facts.' The Federal Communications Commission and the Federal Power Commission, respectively, sought to recoup all of their costs in regulating community antenna television systems and in administering the Federal Power Act and the Natural Gas Act by assessing fees on the regulated parties. Recognizing that some of the administrative costs at issue "inured to the benefit of the public," rather than directly to the regulated parties, **we expressed doubt whether Congress had clearly intended in the IOAA to delegate authority to Executive agencies to recover the costs of benefits conferred on the public by assessing fees on regulated parties.** We observed that, because such fees do not "besto[w] a benefit on the [regulated party], not shared by other members of society," they might better be thought of as taxes, rather than fees. Given at least the possibility of a constitutional difficulty arising from that delegation under the Taxing Clause, we chose to interpret the IOAA "narrowly to avoid constitutional problems. x x x.

"In *FEA v. Algonquin SNG, Inc.*, we considered a nondelegation challenge to the Trade Expansion Act of 1962 which permitted the President to raise license 'fees' on imports when necessary to protect the national security. In rejecting the challenge, we made clear that National Cable Television and New England Power stand only for the proposition that **Congress must indicate clearly its intention to delegate to the Executive the discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties by imposing additional financial burdens, whether characterized as "fees" or "taxes," on those parties.**"(emphasis supplied, internal citations omitted)

[69] *See* Clinton v. City of New York, 524 U.S. 417 (1998); Loving v. United States, 517 U.S. 748 (1996); and Touby v. United States, 500 U.S. 160 (1991).

[70] Maceda v. ERB, G.R. No. 95203-05, 192 SCRA 363, Dec. 18, 1990, for example, in defending the increase in the price of the petroleum from the petitioner's contention that the ERB exercised undue delegation of the power to tax, held that it was not an act of taxation, but police power, without undertaking a proper determination of its nature.

exclusio alterios does not apply because these exceptions are clearly not exhaustive. This will not violate Article VI, Section 24 of the Constitution because revenue bills contemplated by the provision includes only "bills which have the avowed purpose of increasing the funds for meeting the general governmental needs by a compulsory imposition and without giving any direct and immediate equivalent in return for the payment thereof."[71] Even if the law delegating the power to tax *is* a revenue bill, the requirement that it should originate from the House of Representatives can be complied with and this will not do violence to the theory.[72] But it may be conceded that the broadness with which the U.S. Supreme Court applied the delegation to taxing power will not be possible here because our jurisprudence on sufficiency of standards tests are so liberal as to make its application to taxing power inconceivable. The *Philcomsat*[73] ruling, for example, which held a delegation valid though it does not state any standard, because the standard of justness and reasonableness is implied and inherent, is so ludicrously broad.

V. HOW TO DISTINGUISH THE POWERS

The manner with which the Court distinguishes the two types of exaction in cases where it is assailed for being an undue exercise of the power to tax, reflects the same manner with which the court makes the distinction in cases where the issue is on the reasonableness of the amount of exaction. The cavalier manner with which the nature of the tax is ascertained directly affects the rights and remedies of those who are adversely affected by an exaction that is excessive, ultra vires, or an undue delegation of legislative power. Hence, it is unjust if the court's determination does not really reflect the true nature of the imposition.

It is submitted that the most determinative way of ascertaining the nature of the exaction is to apply an *elements-test*. "The various factors affecting the determination of the question whether a particular exaction or imposition is or is not a tax **exhibit a close correlation with the individual elements of the generally accepted definitions of**

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[71] 51 AM JUR 350.

[72] It must be mentioned that in the United States, the constitutions of the states also require revenue bills to originate in the lower house. *See* 51 AM JUR 350.

[73] G.R. No. 84818, 180 SCRA 218, Dec. 18, 1989.

taxation."[74] The elements of a tax are: (1) it is a forced charge, (2) it is payable in money and is not a debt, (3) it traces its origin from a law passed by the legislative power, (4) it is assessed in accordance with some reasonable rule of apportionment, i.e. progressive, and uniform, (5) it is imposed on subjects within the State's jurisdiction, and (5) it is levied for public purpose, i.e. to provide revenues to defray general cost of government.[75] Thus, if an exaction is optional, it is not a tax; if it is levied to reimburse the state for services rendered, it is not a tax; if a charge for raising revenue when invoked for the purpose of regulation, it is an exercise of police power,[76] etc. It does not have to meet all these elements to qualify as a tax; substantial conformity would suffice. This makes an imposition more difficult to pass as a tax, which is as it should be because it is more difficult to invalidate an excessive tax than an excessive license fee. The case of *City of Troy v. Western Union Telegraph Co.*[77] illustrates an application of this approach:

> Is the exaction here in question a tax? The statute itself denominates it a tax, and it must be confessed that it has all the characteristics of a tax. It is a charge imposed by the legislature for the purpose of revenue. It is not founded upon contract, and does not establish the relation of debtor and creditor. It is an enforced proportional contribution, levied by authority of the state, and, as respondent claims, for public needs.

In addition, the following guidelines should also be considered to modify the narrowness of the above criteria:

"Taxes imposed by the legislature on proper subjects, with the primary motive of obtaining revenue from them, and with the incidental motive of discouraging them by making their continuance onerous, do not lose their character as taxes because of the incidental motive."[78] This may be referred to as the primary motive or intent test.

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[74] 51 AM JUR 50.

[75] Aban, *supra* note 12, at 2-3.

[76] 51 AM JUR 96, *citing* Carthage v. Rhodes, 101 Mo 175 (14 SW 181) & Litchville v. Hanson, 19 ND 672 (124 NW 1119).

[77] 51 So. 523 (164 Ala. 482).

[78] 51 AM JUR 51, *citing* Bailey v. Drexel Furniture Co., 259 US 20.

The name or designation given by the legislature or other public body is not conclusive whether or not it is a tax.[79]

"If the primary purpose of a statute or ordinance exacting an imposition of some kind is to raise revenue, it represents an exercise of the taxing power, while if the primary purpose of such an enactment is the regulation of some particular occupation, calling, or activity, it is an exercise of the police power, *even if* it incidentally produces revenue."[80] This primary purpose test is distinguishable from the primary motive test as the former looks at the actual disposal of the collections. Applying this test, the primary purpose as defined by the Court in *PAL v. Edu*[81] is wrong. Justice Gutierrez, citing a reviewer in taxation by Umali, said "if the purpose is primarily revenue, or if revenue is, **at least, one of the real and substantial purposes**, then the exaction is properly called a tax."

"The fact that a failure to pay a license exaction is made punishable as a crime by a statute does not, in itself, establish the legislation as a revenue measure."[82]

"[T]he imposition of a business license tax under a general taxing ordinance is presumed to be for revenue alone, unless the contrary is made clearly to appear."[83]

A licensing ordinance whose title indicates that it is for general revenue purposes, and the contents thereof include no provisions for supervision, control, or regulation of the licensed activities is a revenue tax.[84]

The amount of the exaction may be considered in determining whether the enactment is a true regulatory legislation or is a mere money-making device, since the amount may be so large as to suggest that it was a revenue tax. If it is clearly shown to be obviously and largely beyond what is

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[79] *Id. citing e.g.* U.S. v. One Ford Coupe Auto, 272 US 321, State ex rel Wyatt v. Ashbrook, 154 Mo 375.
[80] 51 AM JUR 96-97.
[81] G.R. No. 41383, 164 SCRA 320, Aug. 15, 1988.
[82] 51 AM JUR 2d 26.
[83] *Id.*
[84] *Id.*

needed for the regulatory services rendered, it can be declared as a revenue tax.[85]

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[85] City of Portage v. Harrington, 598 NE 2d 634.